

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 115. MIDWIVES

##### 16 TAC §115.80

The Texas Department of Licensing and Regulation (Department) proposes amendments to the existing rule at 16 Texas Administrative Code (TAC), Chapter 115, §115.80, regarding the Midwives program. These proposed changes are referred to as "proposed rule."

##### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 115, implement Texas Occupations Code, Chapter 203, Midwives.

The proposed rule lowers the application fee for an initial midwife license from \$275 to \$195 and lowers the application fee for renewal of a midwife license from \$550 to \$390. The proposed rule is necessary to set fees in amounts reasonable and necessary to cover the costs of administering the Midwives program, as required by Texas Occupations Code §51.202. Department staff reviewed the costs of administering the Midwives program and determined that license application fees should be lowered so that the revenue from the fees does not exceed the costs of administering the program.

##### *Advisory Board Recommendations*

Due to time constraints, the proposed rule was not presented to the Midwives Advisory Board prior to publication of the proposed rule in the *Texas Register*. However, the proposed rule will be presented to the Advisory Board before being presented to the Texas Commission of Licensing and Regulation (Commission) for possible adoption.

##### SECTION-BY-SECTION SUMMARY

The proposed rule amends §115.80, Fees, by reducing the midwife license initial application fee in paragraph (1) from \$275 to \$195 and by reducing the midwife license renewal application fee in paragraph (2) from \$550 to \$390 for each two-year renewal period.

##### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase in revenue to the state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, there is an estimated loss in revenue to the state government in the amount of \$23,760 and no estimated loss in revenue to a local government as a result of enforcing or administering the proposed rule.

##### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rule will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

##### PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there will be a reduction in costs (savings) to persons who are required to comply with the proposed rule. Midwife licensees will save \$80 each year for the first five years the proposed rule is in effect.

##### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

##### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

##### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

##### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the agency has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does require an increase or decrease in fees paid to the agency. The proposed rule lowers the application fees for the issuance and renewal of midwife licenses, which will result in a decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule does not expand, limit, or repeal an existing regulation.
7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rule does not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the proposed rule.

#### §115.80. Fees.

All fees must be made payable to the department and are nonrefundable.

(1) Midwife license initial application fee--\$195 [\$275]

(2) Midwife license renewal application fee--\$390 [\$550]  
for each two-year renewal period

(3) Duplicate license fee--\$20

(4) Retired voluntary charity care status license initial application fee--\$0

(5) Retired voluntary charity care status license renewal application fee--\$0

(6) Jurisprudence examination fee--\$35

(7) Basic midwifery education course initial application fee--\$150

(8) Basic midwifery education course on-site evaluation fee--\$500

(9) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(10) Dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(11) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 2, 2023.

TRD-202303647

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 463-7750



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER K. FORMULA ADVISORY COMMITTEE - COMMUNITY AND TECHNICAL COLLEGES

#### 19 TAC §§1.156 - 1.163

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter K, §§1.156 - 1.163, concerning the Community and Technical Colleges Formula Advisory Committee (CTCFAC). Specifically, the Coordinating Board plans to repeal this subchapter and replace it with new language establishing the Standing Advisory Committee for Public Junior Colleges, in accordance with changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board also intends to adopt new rules continuing the representation of technical colleges and state colleges in a different advisory committee and transferring the Report of Fundable Operating Expenses provision to a different chapter of Texas Administrative Code (TAC).

Rules 1.156 - 1.163 concern the establishment of the CTCFAC, including the authority and purpose for the committee and its membership, duration, meetings, assigned tasks, and other matters related to formula funding for the community and technical colleges sector.

Statute charges the Coordinating Board with establishing committees composed of representatives from each institutional grouping to study and recommend changes in the funding formulas for each institutional group (Texas Education Code (TEC), §61.059(b)-(b-1)). Currently, the Coordinating Board organizes this obligation in three advisory committees: one for community and technical colleges (encompassing public junior colleges, public technical colleges, and public state colleges), one for general academic institutions, and one for health-related institutions.

As part of the changes enacted by H.B. 8, statute no longer includes public junior colleges funded under TEC, Chapter 130A, on these formula advisory committees (Section 22, H.B. 8, 88th Leg., R.S. (2023)). Instead, these functions will move to a different committee: the public junior college sector will now give advice and counsel on funding through a standing advisory committee established under TEC, §130.001(b) (Section 33, H.B. 8, 88th Leg., R.S. (2023)).

The Coordinating Board intends to repeal Chapter 1, Subchapter K, relating to the CTCFAC, in order to adopt a new chapter establishing the Standing Advisory Committee for Public Junior Colleges. Certain functions currently contained in Chapter 1, Subchapter K, will move to other sections of TAC: the Coordinating Board will ensure that technical colleges and state colleges have continued representation in this process by amending 19 TAC, Part 1, Chapter 1, Subchapter L, to include them within the current formula advisory committee framework. The Coordinating Board also intends to continue the Report of Fundable Operating Expenses in another subchapter of TAC specifically relating to reporting and data requirements for the community college formula funding process.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is updating TAC to reflect statutory changes to the constitution of the formula advisory committees. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.059(b)-(b-1), which provides the Coordinating Board with the authority to establish advisory committees consisting of cross-institutional representatives to study and recommend changes in formula funding.

The proposed repeal affects Texas Education Code, Sections 61.059(b)-(b-1) and 130.001(b).

*§1.156. Authority and Specific Purposes of the Community and Technical Colleges Formula Advisory Committee.*

*§1.157. Definitions.*

*§1.158. Committee Membership and Officers.*

*§1.159. Duration.*

*§1.160. Meetings.*

*§1.161. Tasks Assigned to the Committee.*

*§1.162. Report of Fundable Operating Expenses.*

*§1.163. Report to the Board; Evaluation of Committee Costs and Effectiveness.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2023.

TRD-202303611

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 427-6548



## SUBCHAPTER K. STANDING ADVISORY COMMITTEE: PUBLIC JUNIOR COLLEGES

### 19 TAC §§1.156 - 1.162

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter K, §§1.156 - 1.162, concerning the Standing Advisory Committee for Public Junior Colleges.

Specifically, these new sections will establish the Standing Advisory Committee for Public Junior Colleges, in accordance with statutory changes made by Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 1.156 establishes the statutory authority for the new standing advisory committee, which comes from Texas Education Code (TEC), §§130.001(b)(5) and 130A.005. It also states the purposes of the new standing advisory committee are to provide advice and counsel regarding the funding of public junior colleges, as required by H.B. 8, as well as regarding financial incentives to achieve the goals of the state's higher education plan, as described in TEC, §61.051. The committee may also perform other duties as assigned by the Board or Commissioner, in keeping with TEC, §61.026.

Rule 1.157 contains definitions for common terms used in this subchapter. These definitions parallel definitions used in the TEC and in other parts of the Texas Administrative Code and provide clarity to the reader by distinguishing between the governing board and the agency as a whole.

Rule 1.158 states the membership requirements of the new standing committee and appointment process. The membership requirements are designed to ensure the committee consists of members who have appropriate subject-matter knowledge and who can represent the interests of a broad cross-section of the public junior college sector. The rule caps the number of members on the advisory committee at 12, below the maximum number required by Texas Government Code, §2110.002.

Rule 1.159 states that the committee may continue until September 1, 2027, a four-year period consistent with requirements for the duration of advisory committees contained in Texas Government Code, §2110.008.

Rule 1.160 states that the committee shall meet at least once per quarter and that the presiding officer may call special meetings.

Rule 1.161 stipulates the tasks assigned to the committee, which include providing counsel to the Board and Commissioner on the administration of the public junior college finance program as enacted in TEC, Chapter 130A; studying and making recommendations for the modifications of formula funding or other components of the finance program; identifying funding incentives to accomplish the objectives in the state's strategic plan for higher education; and other charges as devised by the Board or Commissioner.

Rule 1.162 requires the committee to provide recommendations to the Commissioner on policies and rules pertaining to the Public Junior College Finance Program. The timing of these recommendations are based on a schedule determined by the Commissioner in order to inform recommendations to the Board.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has determined that the public benefit anticipated as the result of adopting this rule is establishing a forum for public junior colleges to provide the Coordinating Board with advice and counsel with respect to the funding of that sector, aligning Coordinating Board rules with recent statutory changes. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Section 130.001(b), which provides the Coordinating Board with the authority to establish a standing advisory committee composed of representatives of public junior colleges to provide advice and counsel with respect to the funding of public junior colleges.

The proposed new sections affect Texas Education Code, §§61.026 and 130.001(b), and Texas Government Code, Chapter 2110.

#### §1.156. Authority and Specific Purposes of the Standing Advisory Committee for Public Junior Colleges.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §130.001(b).

(b) Purposes. The Standing Advisory Committee for Public Junior Colleges is created to provide the Commissioner and Board with advice and counsel with respect to the funding of public junior colleges and financial incentives to achieve the goals of the state's higher education plan and carry out the purposes of Texas Education Code, Chapter 130A, implementing the Public Junior College Finance Program. The committee also performs other duties related to funding that the Board or Commissioner assign to the committee.

#### §1.157. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

- (1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board
- (2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Coordinating Board--Unless context indicates otherwise, the agency known as the Texas Higher Education Coordinating Board and staff employed by the agency to carry out assigned duties of the agency.

§1.158. Committee Membership and Officers.

(a) Membership shall consist of senior administrators and representatives of Texas public junior colleges with knowledge of the current funding formulas and the educational goals of the state.

(b) Membership on the committee should include:

- (1) Representatives of each accountability group;
- (2) Presidents or Chancellors;
- (3) Chief Financial or Academic Officers; and
- (4) Institutional Research or other expert campus representatives.

(c) The number of committee members shall not exceed twelve (12).

(d) The Commissioner shall recommend members to the Board for appointment.

(e) The Commissioner shall select the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board and the Commissioner.

(f) Each member shall serve a three-year staggered term, unless otherwise provided by the Commissioner. A member may serve more than one term.

(g) The committee may appoint subcommittees or workgroups as necessary to complete the work.

§1.159. Duration.

The committee shall continue until September 1, 2027, and may be re-established by the Board.

§1.160. Meetings.

The committee shall meet on a regular basis not less than once a quarter. Special meetings may be called as deemed appropriate by the presiding officer.

§1.161. Tasks Assigned to the Committee.

Tasks assigned to the committee include:

(1) Provide counsel to the Board and Commissioner on the administration of the Public Junior College Finance Program;

(2) Study and make recommendations for modification to the formulas and other components of the Public Junior College Finance Program that will increase effectiveness and efficiencies of the programs delivered;

(3) Identify funding incentives that would support the achievement of the state's goals outlined in the long-term master plan for higher education authorized in the Texas Education Code, §61.051(a-1); and

(4) Any other charges issued by the Board or Commissioner of Higher Education.

§1.162. Recommendations.

The committee shall provide recommendations to the Commissioner on policies and rules necessary to implement the Public Junior College Finance Program. The committee shall provide the recommendations on a schedule approved by the Commissioner necessary to ensure the

Commissioner can make timely recommendations to the Board for the adoption of rules for the program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2023.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



**SUBCHAPTER L. FORMULA ADVISORY COMMITTEE - GENERAL ACADEMIC INSTITUTIONS, TECHNICAL COLLEGES, AND STATE COLLEGES**

**19 TAC §§1.164 - 1.167**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendment to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter L, §§1.164 - 1.167, concerning the General Academic Institutions Formula Advisory Committee (GAIFAC). Specifically, this amendment adds public technical colleges and public state colleges to the existing GAIFAC, ensuring that those institutions will continue to have representation on formula advisory committees established under Texas Education Code (TEC), §61.059(b)-(b-1), following their removal from the committee for community colleges.

Rules 1.164 - 1.167 make conforming changes to the Texas Administrative Code reflecting the decision to include the technical colleges and state colleges in the existing GAIFAC. Rule 1.165 updates the definitions to more accurately reflect the terms used in Texas Education Code chapter 61 and these rules.

Statute charges the Board with establishing committees composed of representatives from each institutional grouping to study and recommend changes in the funding formulas for each institutional group (TEC, §61.059(b)-(b-1)). Currently, the Board organizes this obligation in three advisory committees: one for community and technical colleges (encompassing public junior colleges, public technical colleges, and public state colleges), one for general academic institutions, and one for health-related institutions.

As part of the changes enacted by H.B. 8, statute no longer includes public junior colleges funded under TEC, Chapter 130A, on these formula advisory committees (Section 22, H.B. 8, 88th Leg., R.S. (2023)). Instead, these functions will move to a different committee: the public junior college sector will now give advice and counsel on funding through a standing advisory committee established under TEC, §130.001(b) (Section 33, H.B. 8, 88th Leg., R.S. (2023)).

The Board has established a new advisory committee solely for public junior colleges in chapter 1, subchapter K, of these rules. To ensure that public technical colleges and public state colleges

continue to have representation on the formula advisory committees, the Coordinating Board proposes including their representatives on the GAIFAC.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be ensuring the continued representation of public technical colleges and public state colleges in the formula funding policymaking process, in accordance with TEC, §61.059(b)-(b-1). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.059(b)-(b-1), which provides the Coordinating Board with the authority to establish advisory committees consisting of cross-institutional representatives to study and recommend changes in formula funding.

The proposed amendment affects Texas Education Code, Sections 61.059(b)-(b-1) and 130.001(b).

#### *§1.164. Authority and Specific Purposes of the General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee.*

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.059(b) and (b-1).

(b) Purposes. The General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee is created

to provide the Board with advice and recommendation(s) regarding a set of formulas that provide appropriate funding levels and financial incentives necessary to best achieve the goals of the state's higher education plan. The committee also performs other duties related to formula funding that the Board finds to be appropriate.

#### *§1.165. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Interested persons--Persons who attend committee meetings as representatives of stakeholder entities and any other persons who have made their interest in the work of the committee known to its presiding officer. Such interested persons may participate in committee discussions, as invited by the presiding officer to do so, but do not have the authority to cast votes.

(4) Public state colleges--Lamar State College - Port Arthur, Lamar State College - Orange, and Lamar Institute of Technology.

(5) The Texas Higher Education Coordinating Board--the agency known as the Texas Higher Education Coordinating Board and its staff.

#### *§1.166. Committee Membership and Officers.*

(a) Membership shall consist of representatives of Texas public general academic institutions, public state colleges, and Texas State Technical College with knowledge of the current funding formulas and the educational goals of the state.

(b) Membership on the committee should include representatives of each accountability group and at least one individual each to represent the public state colleges and Texas State Technical Colleges.

(c) Interested persons, such as legislative and governmental relations staff shall be regularly advised of committee meetings.

(d) The number of committee members shall not exceed twenty-four (24).

(e) The committee may appoint subcommittees or workgroups as necessary to complete its work. The subcommittees or workgroups may include members from the formula advisory committees and other institutional representatives as appropriate.

(f) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(g) Members shall serve six-year staggered terms with one-third of the membership expiring every other year. A member can be re-appointed to serve another term.

#### *§1.167. Duration.*

Not later than September 1 of each odd-numbered year, the Board shall appoint an advisory committee to review the funding formulas for the use of the Governor and the Legislative Budget Board in making appropriations recommendations to the legislature for general academic institutions, technical colleges, and state colleges.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2023.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



## CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

### SUBCHAPTER E. APPROVAL PROCESS FOR NEW BACCALAUREATE PROGRAMS AT PUBLIC JUNIOR COLLEGES

#### 19 TAC §2.87

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter E, §2.87, concerning approval of baccalaureate degrees at public junior colleges. Specifically, this amended section authorizes a public junior college with a baccalaureate degree the ability to change accreditors if it has already been approved by the Southern Association of Colleges and Schools Commission on Colleges.

This amendment aligns with Texas Education Code, §61.051 and §61.003(13), which provides the Coordinating Board with authority to coordinate higher education and designate recognized accreditation organizations.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is expanding the number of Coordinating Board recognized institutional accreditors. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Sections 61.051 and 61.003(13), which provides the Coordinating Board with authority to coordinate higher education and designate recognized accreditation organizations.

The proposed amendment affects Texas Education Code, Sections 61.051 and §61.003(13).

#### §2.87. *Criteria for New Baccalaureate Degree Programs.*

(a) The Board may authorize baccalaureate degree programs at a public junior college in the fields of applied science, including a degree program in applied science with an emphasis on early childhood education, applied technology, or nursing, that have a demonstrated workforce need.

(b) All proposed baccalaureate degree programs must meet the criteria set out in this subsection, in addition to the general criteria in subchapter A, §2.5 (relating to General Criteria for Program Approval), and subchapter F, §2.118 (relating to Post-Approval Program Reviews), of this chapter.

(c) Each public junior college seeking to offer a baccalaureate degree program must comply with the requirements and limitations specified in Tex. Educ. Code, chapter 130, subchapter L.

(d) A public junior college offering a baccalaureate degree program must meet all applicable accreditation requirements of the Southern Association of Colleges and Schools Commission on Colleges. A public junior college that has attained accreditation by the Southern Association of Colleges and Schools Commission on Colleges is authorized to change accreditors to any accrediting agency approved by the Board under chapter 4, subchapter J of this title (relating to Accreditation).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182



## SUBCHAPTER J. APPROVAL OF DISTANCE EDUCATION FOR PUBLIC INSTITUTIONS

#### 19 TAC §2.202

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter J, §2.202, concerning approval of distance education for public institutions. Specifically, this amendment will correct the definition of Hybrid Program to align with the overall definition of Distance Education Degree or Certificate Program that went into effect May 18, 2023.

Rule 2.202, Definitions, provides the meanings of terms used in the subchapter, including definitions for 100-Percent Online Course, Hybrid Course, 100-Percent Online Program, and Hybrid Program. These definitions were effective May 18, 2023, and brought Coordinating Board rules in closer alignment with standard practices in the industry. The proposed amendment corrects the definition of Hybrid Program to better align with the overall definition of Distance Education Degree or Certificate Program.

Michelle Singh, Assistant Commissioner for Digital Learning, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Michelle Singh, Assistant Commissioner for Digital Learning, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the continued maintenance of the Coordinating Board's Distance Education Inventory. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

#### Government Growth Impact Statement

- (1) the rule will not create or eliminate a government program;
- (2) implementation of the rule will not require the creation or elimination of employee positions;
- (3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will not create a new rule;
- (6) the rule will not limit an existing rule;
- (7) the rule will not change the number of individuals subject to the rule; and
- (8) the rule will not affect this state's economy.

Comments on the proposal may be submitted to Michelle Singh, Assistant Commissioner for Digital Learning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [digitalllearning@highered.texas.gov](mailto:digitalllearning@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses offered by institutions of higher education.

The proposed amendment affects Texas Education Code §61.0512(g).

#### §2.202. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. The definitions in 19 TAC, Chapter 2, Subchapter A, §2.3, apply for this subchapter unless a more specific definition for the same term is indicated in this rule.

(1) Credit course--A college-level course that, if successfully completed, can be applied toward the number of courses required for achieving an academic or workforce degree, diploma, certificate, or other formal award.

(2) Distance Education--The formal educational process that occurs when students and instructors are in separate physical locations for the majority (more than 50 percent) of instruction.

(3) Distance Education Course--A course in which a majority (more than 50 percent) of the instruction occurs when the student(s) and instructor(s) are in separate physical locations. The definition of distance education course does not include courses with 50 percent or less instruction when the student(s) and instructor(s) are in separate physical locations. Two categories of distance education courses are defined:

(A) 100-Percent Online Course--A distance education course in which 100 percent of instructional activity takes place when the student(s) and instructor(s) are in separate physical locations. Requirements for on-campus or in-person orientation, testing, academic support services, internships/fieldwork, or other non-instructional activities do not exclude a course from this category.

(B) Hybrid Course--A distance education course in which more than 50 percent but less than 100 percent of instructional activity takes place when the student(s) and instructor(s) are in separate physical locations.

(4) Distance Education Degree or Certificate Program--A program in which a student may complete a majority (more than 50 percent) of the credit hours required for the program through distance education courses. The definition of a Distance Education Degree or Certificate Program does not include programs in which 50 percent or less of the required credit hours are offered through distance education. Two categories of distance education programs are defined:

(A) 100-Percent Online Program--A degree program in which students complete 100 percent of the credit hours required for the program through 100-Percent Online Courses. Requirements for on-campus or in-person orientation, testing, academic support services, internships/fieldwork, or other non-instructional activities do not exclude a program from this category.

(B) Hybrid Program--A degree program in which students complete more than 50 percent but [or more and] less than 100 percent of the credit hours required for the program through Distance Education Courses.

(5) Institutional Accreditor--A federally recognized institutional accreditor approved by the Department of Education under 20 U.S.C. §1099b.

(6) Institutional Plan for Distance Education ("Plan" or "IPDE")--A plan that an institution must submit for Coordinating Board approval prior to offering a distance education program for the first time. Each institution shall periodically update its plan on a schedule as specified in §2.205 of this subchapter.



(7) Principles of Good Practice for Distance Education--Standards and criteria for distance education delivered by Texas public institutions. This document is reviewed and adopted by the Board every three years in accordance with §2.204 of this subchapter. This document is also known as "Principles of Good Practice for Academic Degree and Certificate Programs and Credit Courses Offered at a Distance."

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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## CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §4.9

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter A, §4.9, concerning limitations on the number of courses that may be dropped under certain circumstances by undergraduate students. Specifically, this amendment adds language prohibiting institutions from counting certain courses toward the limit.

The proposed amendment excludes institutions from counting courses a student dropped while enrolled in a previously completed baccalaureate degree program or while enrolled in dual credit courses as a high school student. Coordinating Board authority for this section is found in Texas Education Code §61.051 which describes the Board's role in the Texas system of higher education.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commission for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be fewer limitations on the number of courses that undergraduate students may

drop. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.051, which provides the board with authority to coordinate higher education.

The proposed amendment affects Texas Education Code, Section 61.051.

*§4.9. Limitations on the Number of Courses ~~that~~ ~~That~~ May be [Be] Dropped Under ~~[under]~~ Certain Circumstances by [By] Undergraduate Students.*

(a) Beginning with the fall 2007 academic term, and applying to students who enroll in higher education for the first time during the fall 2007 academic term or any term subsequent to the fall 2007 term, an institution of higher education may not permit an undergraduate student a total of more than six dropped courses, including any course a transfer student has dropped at another institution of higher education, unless:

(1) the institution has adopted a policy under which the maximum number of courses a student is permitted to drop is less than six; or

(2) a disaster declared by the governor results in cessation or limitation of in-person course attendance by students at the institution of a duration determined by the institution to significantly affect the student's ability to participate in course work with consideration of the length of time of the cessation or limitation of in-person course attendance, the type of courses, and the personal circumstances of students affected by the disaster; or

(3) the student shows good cause for dropping more than that number, including but not limited to a showing of:

(A) a severe illness or other debilitating condition that affects the student's ability to satisfactorily complete the course;

(B) the student's responsibility for the care of a sick, injured, or needy person if the provision of that care affects the student's ability to satisfactorily complete the course;

(C) the death of a person who is considered to be a member of the student's family or who is otherwise considered to have

a sufficiently close relationship to the student that the person's death is considered to be a showing of good cause;

(D) the active duty service as a member of the Texas National Guard or the armed forces of the United States of either the student or a person who is considered to be a member of the student's family or who is otherwise considered to have a sufficiently close relationship to the student that the person's active military service is considered to be a showing of good cause;

(E) the change of the student's work schedule that is beyond the control of the student[,] and that affects the student's ability to satisfactorily complete the course; or

(F) other good cause as determined by the institution of higher education.

(4) the enrollment is for a student who qualifies for a seventh course enrollment, who:

(A) has reenrolled at the institution following a break in enrollment from the institution or another institution of higher education covering at least the 24-month period preceding the first class day of the initial semester or other academic term of the student's reenrollment; and

(B) successfully completed at least 50 semester credit hours of course work at an institution of higher education that are not exempt from the limitation on formula funding set out in §13.104(1) - (6) of this title (relating to Exemptions for Excess Hours) before that break in enrollment.

(b) For purposes of this section, a "member of the student's family" is defined to be the student's spouse, child, grandchild, father, mother, brother, sister, grandmother, grandfather, aunt, uncle, nephew, niece, first cousin, step-parent, step-child, or step-sibling; a "person who is otherwise considered to have a sufficiently close relationship to the student" is defined to include any other relative within the third degree of consanguinity, plus close friends, including but not limited to roommates, housemates, classmates, or other persons identified by the student, for approval by the institution on a case-by-case basis.

(c) For purposes of this section, a "grade" is defined to be the indicator, usually a letter like A, B, C, D, or F, or P (for pass) assigned upon the student's completion of a course. A "grade" indicates either that the student has earned and will be awarded credit, if the student has completed the course requirements successfully; or that the student remained enrolled in the course until the completion of the term or semester but failed to provide satisfactory performance required to be awarded credit. A "grade" under this definition does not include symbols to indicate that the course has been left incomplete, whether those symbols indicate a negotiated temporary suspension of the end-of-term deadline for completion of the course requirements commonly designated as "incomplete" status, a dropped course under the conditions designated for this section, or a withdrawal from the institution.

(d) An institution of higher education may not count toward the number of courses permitted to be dropped a course that the student dropped:

(1) while enrolled in a baccalaureate degree program previously earned by the student; or

(2) a dual credit or dual enrollment course that a student dropped before graduating from high school.

(e) [(d)] Each institution of higher education shall adopt a policy and procedure for determining a showing of good cause as specified in subsection (a) of this section and shall provide a copy of the policy to the Coordinating Board.

(f) [(e)] Each institution of higher education shall publish the policy adopted under this section in its catalogue and other print and Internet-based publications as appropriate for the timely notification of students.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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## SUBCHAPTER J. ACCREDITATION

### 19 TAC §4.191, §4.192

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter J, §4.191 and §4.192, concerning recognized institutional accreditors. Specifically, this new section identifies Coordinating Board recognized accrediting organizations. The Board selected the proposed accrediting agencies because these are the accrediting agencies that were the historic regional accreditors and those from which most Texas institutions of higher education would be likely to seek accreditation.

Subchapter J, Accreditation, aligns with Texas Education Code §61.051 and §61.003(13) which provides the Coordinating Board with authority to coordinate higher education and designate recognized accreditation organizations. The new language supports the US Department of Education's decision to allow regional accrediting organizations to accredit institutions anywhere in the country.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be greater flexibility for public institutions of higher education. This rule amendment would allow additional accrediting options and improved efficiency for Texas institutions of higher education. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Sections 61.051 and 61.003(13) which provides the board with authority to coordinate higher education and designate recognized accreditation organizations.

The proposed new sections affect Texas Education Code Sections 61.051 and §61.003(13).

§4.191. Authority.

The authority for this subchapter is Texas Education Code, §61.051 and §61.003(13), which provides the board with authority to coordinate higher education and designate recognized accreditation organizations.

§4.192. Recognized Accrediting Agency.

(a) The board recognizes the following accrediting organizations to accredit institutions of higher education that offer an associate degree or higher:

- (1) Higher Learning Commission;
- (2) New England Commission of Higher Education;
- (3) Northwest Commission of Colleges and Universities;
- (4) Middle States Commission on Higher Education;
- (5) Southern Association of Colleges and Schools Commission on Colleges;
- (6) Western Association of Schools and Colleges Accrediting Commission for Senior Colleges and Universities; or
- (7) Western Association of Schools and Colleges Accrediting Commission for Community and Junior Colleges.

(b) This also includes any revisions to the names of these organizations moving forward.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Texas Higher Education Coordinating Board

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SUBCHAPTER P. APPROVAL OF DISTANCE EDUCATION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

**19 TAC §§4.255 - 4.264**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter P, §§4.255 - 4.264, concerning approval of distance education courses and programs for public institutions. Specifically, this repeal will remove rules replaced by the new Title 19, Part 1, Chapter 2, Subchapter J, approved by the Coordinating Board at its April 2023.

Dr. Michelle Singh, Assistant Commissioner for Digital Learning, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the repeal. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Michelle Singh, Assistant Commissioner for Digital Learning, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the repeal will be the removal of rules replaced by the new Title 19, Part 1, Chapter 2, Subchapter J, approved by the Coordinating Board at its April 2023 meeting. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the repeal will not create or eliminate a government program;
- (2) implementation of the repeal will not require the creation or elimination of employee positions;
- (3) implementation of the repeal will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the repeal will not require an increase or decrease in fees paid to the agency;
- (5) the repeal will not create a new rule;
- (6) the repeal will not limit an existing rule;
- (7) the repeal will not change the number of individuals subject to the rule; and
- (8) the repeal will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Michelle Singh, Assistant Commissioner for Digital Learning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [digitallearn-](mailto:digitallearn-)

ing@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses offered by institutions of higher education.

The proposed repeal affects Texas Education Code, Section 61.0512(g).

§4.255. *Purpose.*

§4.256. *Authority.*

§4.257. *Definitions.*

§4.258. *General Provisions.*

§4.259. *Institutional Plan for Distance Education.*

§4.260. *Standards and Criteria for Institutions.*

§4.261. *Standards and Criteria for Distance Education Programs.*

§4.262. *Standards and Criteria for Distance Education Courses.*

§4.263. *Standards and Criteria for Distance Education Faculty.*

§4.264. *Formula Funding General Provisions.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

#### 19 TAC §5.24

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 5, Subchapter B, §5.24, concerning the submission of mission statements and planning notifications. Specifically, this amendment will remove rule text related to submission of planning notifications for specific degree programs that has been superseded by rules adopted by the Coordinating Board in October 2022.

Rule 5.24, Submission of Mission Statements and Planning Notification, sets out requirements for institutions to submit mission statements for their institutions and planning notifications for a certain subset of academic programs. This rule was replaced by 19 Texas Administrative Code Ch. 2, Subch. C, adopted on Oct. 28, 2022, which sets out how institutions must submit planning notifications for proposed programs in line with Texas Education

Code §61.0512(b). The proposed amendments repeal portions of existing rule that have been replaced by recent rulemaking.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved clarity of the program approval rules, now wholly contained in 19 Texas Administrative Code Part 1, Ch. 2. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.0512(b), which provides the Coordinating Board with the authority to require institutions to submit notification prior to beginning preliminary planning for a new degree program.

The proposed amendment affects Texas Education Code §61.0512(b).

#### §5.24. *Submission of Mission Statements and Planning Notification.*

{(a) When submitting a Planning Notification to add a degree program (baccalaureate, master's, and doctoral) to the institution's program inventory, an institution of higher education may be requested to address the Board at a regularly scheduled meeting to describe how the institution believes the potential program contributes to the efficient and effective diffusion of education throughout the state while avoiding costly duplication in program offerings, faculties, and physical plants. An institution shall submit written information to the Board including

the title of the potential proposed program, level, Classification of Instructional Program (CIP) Code, anticipated date of proposal submission, and provide a brief description of the proposed program. Planning Notification must occur prior to an institution beginning planning for or submitting a proposal for a new degree program that requires Board approval.]

[(b)] Review Process.

(1) As provided by Texas Education Code, §61.051(a-5) and §61.052, the Board shall regularly review the role and mission statements, and all similar degree and certificate programs offered by each public senior university or health related institution.

(2) The Boards of Regents shall approve or re-approve institutional mission statements. Each Board of Regents shall provide the Coordinating Board with its current institutional mission statements after any change has been approved.

[(3) Planning Notification must be submitted at least one year prior to submission of a proposal to offer the degree if the proposed program would be a program leading to the award of a "professional degree," as defined by Texas Education Code 61.306, including Doctor of Medicine (M.D.); Doctor of Osteopathy (D.O.); Doctor of Dental Surgery (D.D.S.); Doctor of Veterinary Medicine (D.V.M.); Juris Doctor (J.D.); and Bachelor of Laws (LL.B.).]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

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## SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND REVIEW OF EXISTING DEGREE PROGRAMS

### 19 TAC §§5.41 - 5.46, 5.48, 5.50, 5.52 - 5.55

The Texas Higher Education Coordinating Board (Coordinating Board) proposes repeal of Texas Administrative Code, Title 19, Part 1, Chapter 5, Subchapter C, §§5.41 - 5.46, 5.48, 5.50, 5.52 - 5.55, concerning approval of new academic programs at public universities, health-related institutions, and review of existing programs. Specifically, this repeal will remove language related to new academic program approval and review in existing rules, as that language has been superseded by rules adopted by the Coordinating Board in October 2022.

Rules 5.41 - 5.46, 5.48, 5.50 and 5.54 concern the process for four-year institutions (general academic institutions and health-related institutions) to request approval for new academic programs, specifically new doctoral, master's, baccalaureate, and certificate programs. The Coordinating Board replaced these

processes with rules contained in 19 Texas Administrative Code Chapter 2, Subchapter A, General Provisions; Subchapter B, Approval Process for a Certificate; Subchapter F, concerning approving new baccalaureate and master's degrees; and Subchapter G, concerning approving new doctoral and professional degree programs. The new rule language brings Coordinating Board processes and procedures closer to the requirements of statute, contained in Texas Education Code §61.0512, while also improving the navigability and readability of rules for institutions subject to these requirements. The proposed repeal will remove the old rules superseded by the new rule content.

Rules 5.52 - 5.53 concern the Coordinating Board's evaluation or review of academic programs that have already received approval. The Coordinating Board has moved and centralized all rules related to program review and evaluation in a new subchapter in 19 Texas Administrative Code Chapter 2, Subchapter I, a single location easy for institutions to find and navigate. This new subchapter now contains rules carrying out Coordinating Board statutory obligations in Texas Education Code §§61.0512(e) and 130.311. The proposed repeal will remove language superseded by the new subchapter.

Rule 5.55 concerns how institutions may request revisions to approved programs. The Coordinating Board has established a new section of rule outlining in greater detail how institutions can submit requests for revisions and modifications to approved programs in 19 Texas Administrative Code §2.9. The new rule language provides more guidance on program revision than existing §5.55, which the Coordinating Board proposes to repeal.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be clarifying administrative code by removing sections from the Texas Administrative Code that are superseded by rules approved by the Texas Higher Education Coordinating Board in October 2022. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;

- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.0512, which provides the Coordinating Board with the authority to approve new programs and conduct review of existing programs.

The proposed repeal affects Texas Education Code §61.0512.

- §5.41. *Purpose.*
- §5.42. *Authority.*
- §5.43. *Definitions.*
- §5.44. *Presentation of Requests and Steps for Implementation.*
- §5.45. *Criteria for New Baccalaureate and Master's Degree Programs.*
- §5.46. *Criteria for New Doctoral Programs.*
- §5.48. *Criteria for Certificate Programs at Universities and Health-Related Institutions.*
- §5.50. *Approvals by the Commissioner.*
- §5.52. *Review of Existing Degree Programs.*
- §5.53. *Annual Evaluation of New Doctoral Degree Programs.*
- §5.54. *Noncompliance with Conditions of Approval for New Doctoral Degree Programs.*
- §5.55. *Revisions to Approved Programs.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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 Nichole Bunker-Henderson  
 General Counsel  
 Texas Higher Education Coordinating Board  
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 For further information, please call: (512) 427-6182



**CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES**  
**SUBCHAPTER B. GENERAL PROVISIONS**  
**19 TAC §9.28, §9.29**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 9, Subchapter B, §9.28 and §9.29, concerning the certification of public community colleges as eligible to receive state appropriations. Specifically, the Coordinating Board

plans to repeal these rules and replace them with a new certification process as a result of changes in statute to certification made by Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 9.28 reiterates the requirements that were in the statute that community colleges had to meet to be eligible to receive state appropriations. This list was modified in Texas Education Code, §130.003, by Section 34 of Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 9.29 governs how the Coordinating Board receives and transmits those certifications to the Comptroller and State Auditor to affirm their eligibility to receive state appropriations. The required date and process to transmit these certifications was amended in Texas Education Code, §61.063, by Section 24 of Tex. H.B. 8, 88th Leg., R.S. (2023). Concurrent with other changes made by Tex. H.B. 8, 88th Leg., R.S. (2023), the certification process is being updated in alignment with statutory changes and moved to a new subchapter.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

The public benefit anticipated as the result of adopting this rule is updating Texas Administrative Code to be consistent with statutory changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

**Government Growth Impact Statement**

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.063, which provides the Coordinating Board with the authority to certify what public junior colleges are eligible to receive state appropriations.

The proposed repeal affects Texas Education Code, Sections 61.063 and 130.003.

§9.28. *Appropriations.*

§9.29. *Certification.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



## SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

### 19 TAC §§9.181 - 9.186

The Texas Higher Education Coordinating Board (Coordinating Board) proposes repeal of Texas Administrative Code, Title 19, Part 1, Chapter 9, Subchapter J, §§9.181 - 9.186, concerning approval of new academic associate degree and certificate programs at public two-year institutions. Specifically, this repeal will remove language related to new academic program approval in existing rules, as that language has been superseded by rules adopted by the Coordinating Board in 2023.

Rules 9.181 - 9.186 concern the approval criteria and steps for implementation of new academic associate degree and certificate programs at two-year institutions (public junior colleges, Texas State Technical College-Harlingen, and Lamar State Colleges). The Coordinating Board replaced these processes with rules contained in 19 Texas Administrative Code Ch. 2, Subch. A, General Provisions, Subch. B, Approval Process for Certificates, and Subch. D, Approval Process for New Associate Degrees.

The new rule language brings Coordinating Board processes and procedures closer to the requirements of statute, contained in Texas Education Code, §61.0512, while also improving the navigability and readability of rules for institutions subject to these requirements. The proposed repeal will remove the old rules superseded by the new rule content.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first

five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved clarity of the program approval rules, now wholly contained in 19 Texas Administrative Code Part 1, Ch. 2. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.0512, which provides the Coordinating Board with the authority to approve new programs, and Section 130.001, which requires the Coordinating Board to adopt policies and establish rules to carry out statutory duties with respect to public junior colleges.

The proposed repeal affects Texas Education Code, Sections 61.0512 and 130.001.

§9.181. *Purpose.*

§9.182. *Authority.*

§9.183. *Degree Titles, Program Length, and Program Content.*

§9.184. *Criteria for New Academic Associate Degree Programs and Steps for Implementation.*

§9.185. *Academic Certificates.*

§9.186. *Academic Programs Offered by Texas State Technical College-Harlingen.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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## SUBCHAPTER L. MULTIDISCIPLINARY STUDIES ASSOCIATE DEGREES

### 19 TAC §§9.550 - 9.555

The Texas Higher Education Coordinating Board (Coordinating Board) proposes repeal of Texas Administrative Code, Title 19, Part 1, Chapter 9, Subchapter L, §§9.550 - 9.555, concerning approval of multidisciplinary studies degrees at public two-year institutions. Specifically, this repeal will remove language related to new academic program approval and review in existing rules, as that language has been superseded by rules adopted by the Coordinating Board in 2022.

Rules 9.550 - 9.555 concern the requirements for multidisciplinary associate degrees at two-year institutions (public community colleges, Texas State Technical College-Harlingen, and Lamar State Colleges). The Coordinating Board replaced these requirements with rules contained in 19 Texas Administrative Code Chapter 2, Subchapter A, General Provisions and Subchapter D, Approval Process for New Associate Degrees. The new rule language better aligns with Texas Education Code, §130.0104 and §61.0512, and improves the navigability and readability of rules for institutions subject to these requirements. The proposed repeal will remove the old rules superseded by the new rule content.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved clarity of the program approval rules, now wholly contained in 19 Texas Administrative Code Part 1, Chapter 2. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.0512, which provides the Coordinating Board with the authority to approve new programs and section 130.0104 which requires public junior colleges to establish the multidisciplinary studies associate degree.

The proposed repeal affects Texas Education Code, §§61.0512 and 130.0104.

§9.550. *Purpose.*

§9.551. *Authority.*

§9.552. *Definitions.*

§9.553. *Multidisciplinary Studies Associate Degree Program.*

§9.554. *Adoption of Program.*

§9.555. *Student Advising.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182



## SUBCHAPTER N. BACCALAUREATE DEGREE PROGRAMS

### 19 TAC §§9.670 - 9.678

The Texas Higher Education Coordinating Board (Coordinating Board) proposes repeal of Texas Administrative Code, Title 19, Part 1, Chapter 9, Subchapter N, §§9.670 - 9.678 concerning approval of new baccalaureate programs at public junior colleges. Specifically, this repeal will remove language related to baccalaureate degree program approval and reporting requirements in existing rules, as that language has been superseded by rules adopted by the Coordinating Board in October 2022.

Rules 9.670 - 9.678 concern Coordinating Board approval and oversight of baccalaureate degrees at public junior colleges. In October 2022, the Coordinating Board adopted new rules relating to the oversight of this type of degree program located in 19 TAC Ch. 2, Subch. E. The new rules carry out the Coordinating Board's statutory obligations under Tex. Educ. Code §§61.0512, 130.302, and 130.312 in a single centralized location, organized to improve the readability of the Coordinating Board's administrative code. Because the old rules in Ch. 9 have been superseded by the new rules in Ch. 2, the Coordinating Board proposes repeal of the old rules.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years



the repeals are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the repeals. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeals. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the repeals.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be the improved clarity of the program approval rules, now wholly contained in 19 TAC Part 1, Ch. 2. There are no anticipated economic costs to persons who are required to comply with the repeals as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [elizabeth.mayer@highered.texas.gov](mailto:elizabeth.mayer@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Sections 61.0512(h)(2), 130.302, and 130.312, which provides the Coordinating Board with the authority to administer and approve certain baccalaureate degree programs at public junior colleges.

The proposed repeal affects Texas Education Code §§61.0512(h)(2), 130.302, and 130.312.

§9.670. *Purpose.*

§9.671. *Authority.*

§9.672. *Definitions.*

§9.673. *General Provisions.*

§9.674. *Program Requirements.*

§9.675. *Required Articulation Agreements.*

§9.676. *Special Requirements for Nursing Degree Programs.*

§9.677. *Funding.*

§9.678. *Reporting.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182



## CHAPTER 13. FINANCIAL PLANNING

### SUBCHAPTER A. DEFINITIONS

#### 19 TAC §13.1

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to Texas Administrative Code (TAC), Title 19, Part 1, Chapter 13, Subchapter A, §13.1, concerning finance-related definitions. Specifically, this amendment will add greater specificity and clarity to the definitions applying to finance-related rules. To implement H.B. 8, 88th Leg., R.S. (2023) which makes significant changes to the funding system for community colleges, the Coordinating Board has determined the need for greater precision in the terminology used for financial rules broadly.

Rule 13.1(4), (7), and (8) specifies three distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board; "Coordinating Board," meaning the state agency as a whole; and "Coordinating Board Staff or Board Staff," meaning the staff of the agency. Separating these terms improves the readability and precision of the rules contained in Chapter 13 and allows the Coordinating Board to make a distinction between actions taken by the governing body, agency staff, and the agency as a whole.

Rule 13.1(5) defines the census date, which is the deadline for institutions to submit data relating to students in attendance for the purposes of formula funding. This definition implements Texas Education Code, §§130A.006 and 130A.008, which requires the Coordinating Board to stipulate data reporting requirements in rule.

Rule 13.1(25) - (28) separates a single definition for public two-year colleges into three different component sectors: public junior colleges, public technical institutes, and public state colleges. Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) codifies a formula funding system for public community colleges distinct from the formula funding systems for public technical institutions and public state colleges implemented in the General Appropriations Act. The revised definitions allow for greater drafting clarity and align finance terms in Chapter 13 with Texas Education Code, §61.003, and with institutional categories used by state appropriators.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There

are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be establishing greater clarity and precision in the definitions used in Title 19, Part 1, Chapter 13, relating to Financial Planning. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rule will not create or eliminate a government program;
- (2) implementation of the rule will not require the creation or elimination of employee positions;
- (3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will not create a new rule;
- (6) the rule will not limit an existing rule;
- (7) the rule will not change the number of individuals subject to the rule; and
- (8) the rule will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 130A.005, allowing the Coordinating Board to adopt rules necessary to implement and administer the Public Junior College State Finance Program.

The proposed amendment affects Texas Education Code Section 61.003.

#### §13.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise or the relevant subchapter specifies a different definition.

- (1) Auxiliary Enterprise--Activities providing a service to students, faculty, or staff for a fee directly related to, although not necessarily equal to, the cost of the service.
- (2) Available University Fund (AUF)--A fund established in Article 7, §18, of the Texas Constitution to receive all interest and earnings of the Permanent University Fund and used to pay the debt service on PUF-backed bonds.
- (3) Base Year--The semesters comprising the year of contact hours used for applying the formula funding distribution to the colleges and universities (usually the summer and fall of even years and the spring of odd years).

(4) Board [~~or Coordinating Board~~] --The governing body of the agency known as the [The] Texas Higher Education Coordinating Board.

(5) Census Date--The date upon which an institution may report a student in attendance for the purposes of formula funding as specified in the Coordinating Board Management (CBM) manual for the year in which the funding is reported.

(6) [~~5~~] Contact Hour--A time unit of instruction used by community, technical, and state colleges consisting of 60 minutes, of which 50 minutes must be direct instruction.

(7) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(8) Coordinating Board Staff or Board Staff--Agency staff acting under the direction of the Board and the Commissioner.

(9) [~~6~~] Current Operating Funds--Unrestricted (appropriated) funds, designated funds, restricted funds, and auxiliary enterprise funds.

(10) [~~7~~] Developmental Coursework--Non-degree-credit courses designed to address a student's deficiencies.

(11) [~~8~~] Developmental Education--Courses, tutorials, laboratories, or other efforts to bring student skills in reading, writing, and mathematics to entering college level. English as a Second Language (ESL) courses may be considered developmental education, but only when they are used to bring student skill levels in reading or writing to entering college level. The term as used in this chapter does not include courses in study skills or thinking skills.

(12) [~~9~~] Formula Funding--The mathematical method used to allocate appropriated sources of funds among institutions of higher education.

(13) [~~10~~] Functional categories (as defined by National Association of College [~~col~~lege] and University Business Officers)--Instruction, research, public service, academic support, student service, institutional support, operation and maintenance of plant, scholarships and fellowships, depreciation, auxiliary enterprises, and hospital.

(14) [~~11~~] General Academic Teaching Institution--Any college, university, or institution so classified in Texas Education Code, §61.003(3), or created and so classified by law.

(15) [~~12~~] General Revenue (GR)--State tax revenue.

(16) [~~13~~] Governmental Accounting Standards Board (GASB)--An entity created by the Financial Accounting Foundation to set accounting standards for governmental entities including public institutions of higher education.

(17) [~~14~~] Higher Education Fund (HEF)--A fund established in Article 7, §17, of the Texas Constitution to fund capital improvements and capital equipment for institutions not included in the Permanent University Fund.

(18) [~~15~~] Independent institution of higher education--A private or independent college or university as defined in Texas Education Code, §61.003(15), that is:

- (A) organized under the Texas Non-Profit Corporation Act;
- (B) exempt from taxation under Article VIII, §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code; and
- (C) accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(19) [(16)] Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in Texas Education Code, §61.003.

(20) [(17)] Institutional Expenditures--All costs of activities separately organized and operated in connection with instructional departments primarily for the purpose of giving professional training to students as a necessary part of the educational work of the related departments.

(21) [(18)] Institutional Funds--Fees, gifts, grants, contracts, and patient revenue, not appropriated by the legislature.

(22) [(19)] Local Funds--Tuition, certain fees, and other educational and general revenue appropriated by the legislature.

(23) [(20)] National Association of College and University Business Officers (NACUBO)--Provides guidance in business operations of higher education institutions.

(24) [(21)] Permanent University Fund (PUF)--A fund established in Article 7, §11, of the Texas Constitution to fund capital improvements and capital equipment at certain institutions of higher education.

~~[(22) Public Junior College, Public Technical Institute, Public State College, or Public Two-Year College--Any public junior college, public community college, public technical college, or public state college as defined in Texas Education Code, §61.003.]~~

(25) Public Junior College--A public institution of higher education as defined in Texas Education Code, §61.003(2).

(26) Public State College--Any public state college as defined in Texas Education Code, §61.003(16).

(27) Public Technical Institute--Any public technical institute as defined in Texas Education Code, §61.003(7), excluding Lamar Institute of Technology.

(28) Public Two-year College--Any public junior college, public community college, public technical institute, or public state college.

(29) [(23)] Semester Credit Hour (SCH)--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



## SUBCHAPTER D. FINANCIAL REPORTING

### 19 TAC §13.62

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter D, §13.62, concerning updates to a manual for community college annual financial reports. Specifically, the Coordinating Board plans to repeal this rule and replace it with a new consolidated community college data reporting rule in coordination with changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board also intends to adopt new rules pertaining to community college financial reporting.

Rule 13.62 concerns annual updates to the community college annual financial report manual and its content. Concurrent with other changes made to the Texas Administrative Code related to H.B. 8, 88th Leg., R.S. (2023), the provisions of this rule are being merged with others pertaining to financial reporting by community colleges in a different subchapter.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

The public benefit anticipated as the result of adopting this rule is updating the Texas Administrative Code to have topically consistent organization in relation to the adoption of Tex. H.B. 8, 88th Leg., R.S. (2023). There are no anticipated economic costs to persons who are required to comply with the section as proposed.

#### Government Growth Impact Statement

- (1) the rule will not create or eliminate a government program;
- (2) implementation of the rule will not require the creation or elimination of employee positions;
- (3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will not create a new rule;
- (6) the rule will not limit an existing rule;
- (7) the rule will not change the number of individuals subject to the rule; and
- (8) the rule will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@higher.ed.texas.gov](mailto:funding@higher.ed.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.065, that provides the Coordinating Board with the authority to prescribe uniform financial reporting guidelines.

The proposed repeal affects Texas Education Code, Section 61.065.

§13.62. *Community Colleges.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



**19 TAC §13.63**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter D, §13.63, concerning requirements for community college financial reporting. Specifically, the Coordinating Board plans to amend this rule and move community college-related provisions to a new consolidated community college data reporting rule in coordination with changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board also intends to adopt new rules pertaining to community college financial reporting.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

The public benefit anticipated as the result of adopting this rule is updating the Texas Administrative Code to have topically consistent organization in relation to the adoption of Tex. H.B. 8, 88th Leg., R.S. (2023). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.065, which provides the Coordinating Board with the authority to prescribe uniform financial reporting guidelines.

The proposed amendment affects Texas Education Code, §61.065.

§13.63. *Additional Financial Information Reporting.*

(a) Each university system, general academic institution, technical or state college, and health-related institution shall provide to the Board financial data related to the operation of each system office and institution. This information should be reported in the Board's annual report of financial activity by fund group.

~~[(b) Each community college shall continue to provide to the Board financial data related to the operation of each community/junior college reflecting restricted and non-restricted operating revenues and operating expenses as directed by the Board.]~~

~~(b) [(e)] Each system office and institution of higher education, except public junior colleges, shall provide the report no later than January 1 of each year using the specific content and format prescribed by the Board.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2023.

TRD-202303631

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 427-6548



**SUBCHAPTER F. FORMULA FUNDING  
AND TUITION CHARGES FOR REPEATED  
AND EXCESS HOURS OF UNDERGRADUATE  
STUDENTS**

**19 TAC §§13.101, 13.102, 13.104**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter F, §§13.101, 13.102, and 13.104 in relation to House Bill (H.B.) 8, 88th Leg., R.S. (2023), concerning limitations on the reporting of hours to the Coordinating Board for funding purposes.

The revisions implement statutory amendments passed by the 88th Legislature. Specifically, this amendment will update Coordinating Board rules to accurately reflect two changes made by

H.B. 8. House Bill 8 amended Texas Education Code §61.0595 to establish that hours earned by a student before receiving an associate degree do not count toward the limitation on the hours that may be reported for funding based on a student's current degree program (the "excess hours" rule). The amendment would also update reference to the authority for the limitation on reporting hours related to a course taken by a student for the third time (the "three-peat" rule) to statute instead of a rider provision in the General Appropriations Act.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect:

There would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

The public benefit anticipated as the result of adopting this rule is updating Texas Administrative Code to accurately reflect statute following the adoption of Tex. H.B. 8, 88th Leg., R.S. (2023). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Chris Fernandez, Senior Director for Community College Finance, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Sections 130A.005, 54.014, 61.059(r), and 61.0595 that provide the Coordinating Board with the authority to adopt rules pertaining to the reporting of hours for the purpose of formula funding.

The proposed amendment affects Texas Education Code, Section 54.014 and 61.059(r).

#### §13.101. Authority.

Texas Education Code, §54.014, provides that each institution may charge a higher rate of tuition to students with repeated or excess hours. Texas Education Code, §61.0595, limits formula funding for excess hours. Texas Education Code, §61.059(r), establishes that contact hours or semester credit hours related to a course that a student is

taking for the third time may not be reported for the purpose of formula funding. [The General Appropriations Act, SB 1, Article III, §40, 85th Legislature, Regular Session, limits formula funding for a course for which a student would generate formula funding for the third time.] Texas Education Code, §61.059(b), grants the Coordinating Board the authority to devise, establish, and periodically review and revise formula recommendations for institutions of higher education. Texas Education Code, §130A, establishes the Public Junior College State Finance Program. Texas Education Code, §51.340, limits the number of remedial or developmental education semester credit hours for which formula funding may be received.

#### §13.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Degree Plan--Academic program of courses and their related hours culminating in a degree or certificate, including minors, double majors, and completion of any other special program in which the student is also enrolled, such as a program with a study abroad component.

(2) Excess Hours--Hours attempted by a student that are in excess of the limits and therefore ineligible for formula funding as described in §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours).

(3) Hours--Semester credit hours.

(4) International Study Abroad Student--A student who is a citizen or permanent resident of a nation other than the United States who resides in the nation of which he or she is a citizen or permanent resident and who is in the United States and enrolled at a Texas public institution of higher education for a limited time as part of an exchange program or other study abroad program and who is not seeking a certificate or degree from a Texas Public institution of higher education.

(5) Non-Course-Based Developmental Education Interventions (also known as Non-Semester-Length Interventions and also referred to as interventions)--Interventions that use learning approaches designed to address a student's identified weaknesses and effectively and efficiently prepare the student for college-level work. These interventions must be overseen by an instructor of record, must not fit traditional course frameworks, and cannot include advising or learning support activities already connected to a traditional course; interventions may include, but are not limited to, tutoring, supplemental instruction, or labs.

(6) Remedial and Developmental Courses--Courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college. The term includes English for speakers of other languages (ESOL) courses in which a student is placed as a result of failing the reading or writing portion of a test required by §4.56 of this title (relating to Assessment Instruments).

(7) Repeated Hours for Attempted Course--Hours for a course that is the same or substantially similar to a course that the student previously attempted for two or more times at the same institution. Previously attempted courses from which the student withdraws before the official census date shall not count as an attempted course.

(8) Repeated Hours for Completed Course--Hours for a course in which a student enrolls for two or more times that is the same as or substantially similar to a course that the student previously completed and received a grade of A, B, C, D, F, or Pass/Fail at the same institution.

(9) Student--For the purposes of this subchapter students are defined as undergraduate students [who have not yet received a baccalaureate degree or equivalent].

(10) Workforce Education Courses--Courses offered by two-year institutions for the primary purpose of preparing students to enter the workforce that are included in the Workforce Education Course Manual (WECM) or a college's technical local need course inventory. The term includes both technical courses and continuing education courses.

§13.104. *Exemptions for Excess Hours.*

The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours):

(1) hours earned by an undergraduate [the] student before the award of a prior associate or bachelor's degree [before receiving a baccalaureate degree that has been previously awarded to the student];

(2) hours earned through examination or similar method without registering for a course;

(3) hours from remedial and developmental courses and/or interventions, workforce education courses, or other courses that would not generate credit that could be applied to an academic degree at the institution if the course work is within limitations specified in §13.107 of this title (relating to Limitation on Formula Funding for Remedial and Developmental Courses and Interventions);

(4) hours earned by the student at a private institution or an out-of-state institution;

(5) hours not eligible for formula funding;

(6) semester credit hours earned by the student before graduating from high school and used to satisfy high school graduation requirements;

(7) hours abandoned through enrollment under the Academic Fresh Start Program under Tex. Educ. Code Section 51.931; and

(8) 15 semester credit hours not otherwise exempt earned toward a degree program by a student who:

(A) has reenrolled at the institution following a break in enrollment from the institution or another institution of higher education covering at least the 24-month period preceding the first class day of the initial semester or other academic term of the student's reenrollment; and

(B) successfully completed at least 50 semester credit hours of course work at an institution of higher education that are not exempt in paragraphs (1) - (7) of this section before that break in enrollment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2023.

TRD-202303634

Nichole Bunker-Henderson  
General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 427-6548

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SUBCHAPTER G. RESTRICTED RESEARCH EXPENDITURES

19 TAC §§13.120 - 13.127

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter G, §§13.120 - 13.127, concerning Restricted Research Expenditures. Specifically, the Coordinating Board plans to repeal this subchapter in accordance with changes made by Tex. H.B. 1595, 88th Leg., R.S. (2023). This repeal presumes passage of House Joint Resolution 3, 88th Leg., R.S. (2023), the vote for which would take place November 7, 2023. If the constitutional amendment is approved, the provisions of H.B. 1595 go into effect on January 1, 2024.

Rules 13.120 - 13.122 establish the purpose, authority and definitions related to restricted research. Rules 13.123 - 13.124 establish a restricted research committee to review restricted research awards and the applicable standards and accounting methods for restricted research. Rules 13.125 - 13.126 establish reporting requirements of the institutions and Coordinating Board related to restricted research awards and expenditures. Rule 13.127 provides for audits of research records reported by institutions.

Statute previously provided for the use of restricted research expenditures in the allocation of funding under the Comprehensive Research Fund and Core Research Support Fund and as an eligibility criteria for the National Research University Fund. Due to its use in state funding allocations, statute charged the Coordinating Board with setting standards and accounting methods for determining restricted research expenditures, providing for a committee process to verify reported awards, and auditing research records.

As part of the changes presumed to be enacted under H.B. 1595, statute no longer includes restricted research expenditures as part of any state funding allocations. H.B. 1595 provides for the distribution of the Comprehensive Research Fund based on an institution's federal and private research expenditures. The bill also provides for the redesignation of the Core Research Support Fund as the National Research Support Fund and provides for funding distributions based on an institution's federal and private research expenditures and awards of research doctorates.

Additionally, H.B. 1595 eliminates the National Research University Fund and recreates it as the Texas University Fund (TUF). The TUF provides for new eligibility criteria and uses federal and private research expenditures, rather than restricted research expenditures, as part of its eligibility criteria and allocation methodology.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is the elimination of the reporting of restricted research expenditures, in accordance with the provisions of Tex. H.B. 1595, 88th Leg., R.S. (2023), which removes the collection and use of restricted research expenditures in state funding allocations. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed in accordance with changes made by Tex. H.B. 1595, 88th Leg., R.S. (2023), which eliminated the basis for restricted research standards and accounting and its subsequent use in the allocation of the Comprehensive Research Fund, Core Research Support Fund, and as an eligibility criteria for the National Research University Fund (which was eliminated and recreated as the Texas University Fund).

The proposed repeal affects Texas Education Code, Sections 62.095, 62.096, 62.134, 62.135(b), 62.145, and 62.146.

§13.120. *Purpose and Scope.*

§13.121. *Authority.*

§13.122. *Definitions.*

§13.123. *Restricted Research Committee.*

§13.124. *Standards and Accounting Methods for Determining Restricted Research Expenditures.*

§13.125. *Report on Restricted Research Awards.*

§13.126. *Reporting of Restricted Research Expenditures.*

§13.127. *Audits.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2023.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 427-6548

## SUBCHAPTER P. COMMUNITY COLLEGE FINANCE PROGRAM

### 13 TAC §§13.470 - 13.477

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter P, §§13.470 - 13.477, concerning the new community college finance system established by H.B. 8. Specifically, this new section will implement the new community college finance system established by Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 13.470, Purpose, establishes the purpose of subchapter P to govern the implementation of the community college finance system.

Rule 13.471, Authority, establishes the portions of Texas Education Code (TEC) that authorize the Coordinating Board to adopt rules pertaining to community college finance.

Rule 13.472, Definitions, lists definitions pertinent to the community college finance system.

Paragraphs (1), (2), and (13) define student weights as required by Sections 130A.054 and 130A.101 of H.B. 8 for use in the calculation of the base and performance tier. Economic disadvantage is based on the student's receipt of federal Pell grant funding due to that program's need-based design, which includes rigorous documentation of student needs and family resources, and academic disadvantage is based on the student's determination of college readiness, as measured through the Texas Success Initiative assessments. Adult learners are defined as students aged 25 years or older, in accordance with H.B. 8 requirements.

Paragraphs (7) - (9), (15), (21), and (26) provide definitions for terms (base year, basic allotment, census date, full-time student equivalent (FTSE), local share, weighted FTSE used in the calculation of the base tier, defined in paragraph (6), which measures a college's instruction and operations (I&O) needs based on their weighted FTSEs and the number of contact hours they delivered in the most recent academic terms (the "base year").

Paragraph (27) defines weighted outcome completions as the count of designated student outcomes that have been weighted by student characteristics. This provides the basis for the allocation of funding under the performance tier, which is further refined by the below definition paragraphs.

Paragraphs (3) - (5), (11), (18) - (20), and (23) provide definitions of credential types, or associated requirements, that may be eligible for purposes of performance tier funding. The definitions tie to paragraph (16), fundable credentials, which further refines what credential types, including associate, baccalaureate degrees, certain certificates, Occupational Skills Awards (OSAs), and Institutional Credential Leading to Licensure or Certification (ICLC) may receive funding. In alignment with H.B. 8, all fundable credentials will meet the definition of credential of value. The determination of "credential of value" for ICLCs is refined to

provide semester credit hour (SCH) thresholds for the credential as these are new credential types collected from the community colleges and providing thresholds ensures the Coordinating Board is prioritizing credentials that are producing graduates who meet the state's workforce needs. The determination of "credential of value" for OSAs is aligned to the definition of OSA, which includes requirements that the credential meet workforce needs.

Paragraph (10) defines a credential of value as credentials that will provide a positive return-on-investment within 10 years (on average), such that cumulative earnings exceed initial investment, for baccalaureate, associate, and certificate degree programs. This definition is aligned with and implements the Coordinating Board's long range master plan for higher education by using data to determine whether a student is better off after earning the credential, inclusive of their costs of attendance, than a comparable student who earned only a high school diploma. The purpose is to incentivize institutions to strongly consider workforce needs and student's long term economic and social success in making decisions regarding program offerings, student services, and other key areas.

Paragraph (17) defines high demand fields in alignment with the recommendations of the last Community and Technical College Formula Advisory Committee. This list derives from an analysis of state and regional workforce trends based on higher education regions in the state. This list includes fields associated with an occupation on 7 of 10 regional lists of the top 25 occupations by projected 10-year growth and the fields associated with every region's top 5 occupations by projected 10-year growth. The list also includes any field previously funded as a "critical field" by the legislature in the fiscal year 2022-23 success point formula to help transition community colleges to the new methodology.

Paragraph (12) defines eligibility for a dual credit or dual enrollment fundable outcome to receive funding through the performance tier. The definition provides that all statutorily fundable SCHs of dual credit or dual enrollment may count towards the achievement of 15 SCHs applicable to an academic or workforce requirement at the postsecondary level. Aligning with statutory funding eligibility requirements increases the likelihood that these courses will result in meaningful progress towards postsecondary credentials while encouraging community colleges to transition to a system in which dual credit/enrollment students take a structured sequence of courses that enhances timely progress towards an academic or workforce credential. The Coordinating Board anticipates that this definition will be further refined as additional data become available in future years.

Paragraphs (24) and (25) define eligibility for a student's achievement of a structured co-enrollment or transfer fundable outcome. These outcomes may receive funding through the performance tier and the definitions align with the requirements in Section 130A.101, as added by H.B. 8.

Paragraphs (14) and (22) define formula and non-formula support, respectively, based on the method of determining the funding provided to the community college.

Rule 13.473, Base Tier Allotment, establishes the calculations used to determine Base Tier funding that the legislature entitled community colleges to receive under TEC, Sections 130A.051 - 130A.056. To summarize, Base Tier funding is calculated as Instruction and Operations (I&O) minus Local Share. If Local

Share is greater than Instruction and Operations, then Base Tier funding is zero.

Specifically, Rule 13.473(b) establishes the Instruction and Operations funding amount, corresponding to TEC, Section 130A.052, as Contact Hour Funding plus the product of the Weighted Full Time Student Equivalents (Weighted FTSE) multiplied by Basic Allotment. The rule explicitly defines the calculations used to derive Full Time Student Equivalents based on contact hour and SCHs reported to the Coordinating Board by community college districts. Hours reported are weighted by student characteristics as instructed by TEC, Section 130A.054, at levels based on the higher cost of educating students with certain characteristics (e.g., adult learners are weighted the highest due to the higher cost of educating the student). In accordance with TEC, Section 130A.055, the rule defines Contact Hour Funding as the Institution's reported base year contact hours, weighted by the average cost to provide each contact hour in each discipline as defined in the Report of Fundable Operating Expenses. The Basic Allotment amount and contact hour funding amount are derived based on the Fiscal Year 2024 appropriations for the Base Tier as provided by the General Appropriations Act for the 2024-25 Biennium, in accordance with TEC, Sections 130A.053 and 130A.055.

Rule 13.473(c) establishes Local Share as the amount of maintenance and operations ad valorem tax revenue generated by \$0.05 per \$100 of taxable property value in a college's taxing district plus the amount of tuition and fee revenue that would be generated by charging the average amount of tuition and fees charged by community colleges districts in the state of Texas to each in-district FTSE, in accordance with TEC, Section 130A.056. Specifically, the Coordinating Board will calculate estimated tax revenue for each district as the actual amount of current tax revenue collected in Fiscal Year 2022 multiplied by the ratio of the maintenance and operations tax rate to the total tax rate, divided by the product of the maintenance and operations tax rate and 100 and multiplied by five. This estimation takes into account that not all property taxes owed are able to be collected by the institutions due to delinquent or late collections over which the institutions have no control. The Coordinating Board will estimate tuition and fee revenue by summing 1) the average of tuition and fees charged by community colleges to in-district students in fiscal year 2021, as reported by the federal Integrated Postsecondary Education Data System, multiplied by non-dual credit or dual enrollment FTSEs in FY22 and 2) the amount of tuition set per SCH for the Financial Aid for Swift Transfer (FAST) program, multiplied by dual credit or dual enrollment SCHs in FY22. Using the average tuition and fee rate specific to in-district students avoids unduly penalizing colleges that have above-average percentages of in-district students and/or that provide substantial discounts to their in-district students, Using the two different tuition rates, depending on the type of student, provides further equity in the method of estimating tuition and fee revenue across the community college districts by avoiding an undue penalty on colleges participating in the FAST program and those with higher percentages of dual credit or dual enrollment students, regardless of their participation in FAST.

Rule 13.474, Performance Tier Funding, establishes the calculations used to determine Performance Tier Funding, which the Legislature entitled community colleges to receive under TEC, Section 130A.101. The rule lists those outcomes that merit performance funding and the student characteristics that garner



added funding at levels in alignment with those set for the base tier funding pursuant to TEC, Section 130A.001.

The rule establishes values for the fundable outcomes, which are derived based on appropriations made in the 2024-25 General Appropriations Act for the Performance Tier strategy.

Funding is set \$3,500 per outcome for transfer and structured co-enrollment fundable outcomes, certificates awarded in a high-demand field, and associate or baccalaureate degrees not in a high-demand field. The equal funding rate across these outcomes reflects the great benefit they confer to students and to the state as well as the importance of institutions' ability to impartially guide and assist students in pursuing different forms of valuable success.

Completion of dual credit or dual enrollment fundable outcomes are set at a lower amount, \$1,700, due to the additional funding institutions will receive via participation in the FAST program; the fact that these outcomes do not involve conferral of a credential or enrollment in a baccalaureate program; and the tendency of these courses to be lower-division academic courses with below-average cost of delivery.

Across all credentials, high-demand fields receive higher funding rates to incentivize institutions to develop and grow programs in areas more closely aligned with the current and future workforce needs of the state.

Rule 13.475, Formula Transition Funding, establishes that after calculating the base tier and performance tier funding for each community college, the Coordinating Board shall ensure that a community college district does not receive less in formula funding in FY 2024 than it received in FY 2023 appropriations for formula funding (contact hours, success points, core operations, and bachelor's of applied technology funding) and need based supplements. The Coordinating Board judges this provision to be necessary to smooth the transition from the prior system of formula funding predominantly based on contact hour generation to the new system of performance-based funding. Including this provision ensures that no institution will experience as significant detrimental impact on its operations as the new system adjusts funding and moves to outcome-driven performance.

Rule 13.476, Payment Schedule, sets out both the payment schedule for non-formula support items and the payment schedule (three times per year) at which the Coordinating Board will make formula funding payments to each institution as authorized by TEC, Section 130.0031, as amended by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board shall pay all non-formula support item amounts to the institution by September 25th of a fiscal year, in accordance with the requirements in the 2024-25 General Appropriations Act (Article IX, Section 18.04 Contingency for House Bill 8(a)(4)). For FY24, the first payment is 50% of the total formula funding entitlement, 25% for the second payment and the final payment. Institutional stakeholders suggested that the Coordinating Board should make the first payment 50% in recognition that a college district's expenses are weighted towards the start of the fiscal year and to smooth the transition from the prior payment schedule that historically provided 48% of funding to a community college district by October 25.

Rule 13.477, Close Out, establishes the final process the Coordinating Board shall undertake to finalize the prior fiscal year's formula funding for community colleges. The Coordinating Board shall review and verify distributions made to the community colleges in the prior fiscal year and, if necessary, adjust a com-

munity colleges first payment of the next fiscal year to correct funding, as needed, in accordance with TEC, Section 130A.009. TEC, Section 130.0031, authorizes the Coordinating Board to make adjustments to the installment payments within the fiscal year to ensure the Coordinating Board delivers the correct funding to each institution. The Close Out process caps the final adjustment to payments that occur based on the outcomes, certified reported data, and funding made to each institution in the fiscal year. Subsequent to Close Out, the Coordinating Board will use the adjustment and overallocation process under Texas Administrative Code, subchapter R, of this chapter to make any further adjustments to funding that was owed for a Closed Out fiscal year. Specification of this process by rule ensures that each institution has notice of the Coordinating Board's determination that funding has been fully delivered for that year.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to implement the new public junior college finance system established by H.B. 8. Such ancillary fiscal implications may include the need to collect and report additional data in order to obtain additional outcome-based funding.

Fiscal implications of increased funding to institutions of higher education are funded as part of the new public junior college finance system in statute and the General Appropriations Act. The rules do not impose additional costs of compliance beyond those provided for in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the implementation of H.B. 8, which establishes a modern and dynamic finance system that ensures each public junior college has access to adequate state appropriations and local resources to support the education and training of the workforce. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will create or a government program, as required by House Bill 8;
- (2) implementation of the rules will require the creation or elimination of employee positions, as required by House Bill 8;
- (3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency, as provided in House Bill 8;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules and take other actions consistent with Texas Education Code, Chapter 61, Chapter 130, and Chapter 130A to implement Tex. H.B. 8, 88th Leg., R.S. (2023). In addition, Texas Education Code, Section 130.355, permits the Coordinating Board to establish rules for funding workforce continuing education.

The proposed new sections affect Texas Education Code, Sections 28.0295, 61.003, 61.059, 130.003, 130.0031, 130.0034, 130.008, 130.085, 130.310, 130.352 and Chapter 130A.

§13.470. Purpose.

The purpose of this subchapter is to implement the Community College Finance Program authorized by Texas Education Code, Chapters 61, 130, and 130A.

§13.471. Authority.

The Coordinating Board adopts this subchapter pursuant to Texas Education Code, §130A.005, requiring the Coordinating Board to adopt rules to implement the Community College Finance Program created in Texas Education Code, Chapters 61, 130, and 130A.

§13.472. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Academically Disadvantaged--A designation that applies to postsecondary students who have not met the college-readiness standard in one or more Texas Success Initiative (TSI) assessments as provided by chapter 4, subchapter C, §4.57 of this title (relating to College Ready Standards), and who were not classified as either waived or exempt pursuant to chapter 4, subchapter C, §4.54 of this title (relating to Exemptions, Exceptions, and Waivers).

(2) Adult Learner--A student aged 25 or older on September 1 of the fiscal year for which the applicable data are reported, in accordance with Coordinating Board data reporting requirements.

(3) Advanced Technical Certificate (ATC)--A certificate that has a specific associate or baccalaureate degree or junior level standing in a baccalaureate degree program as a prerequisite for admission. An ATC consists of at least 16 semester credit hours (SCH) and no more than 45 SCH and must be focused, clearly related to the prerequisite degree, and justifiable to meet industry or external agency requirements.

(4) Associate Degree--An academic associate degree as defined under Texas Education Code, §61.003(11), or an applied associate degree as defined under Texas Education Code, §61.003(12)(B).

(5) Baccalaureate Degree--A degree program that includes any grouping of subject matter courses consisting of at least 120 SCH which, when satisfactorily completed by a student, will entitle that student to an undergraduate degree from a public junior college.

(6) Base Tier Funding--The amount of state and local funding determined by the Board for each public junior college that ensures the college has access to a defined level of funding for instruction and operations.

(7) Base Year--The time period comprising the year of contact hours used for calculating the contact hour funding to public junior colleges. A base year includes certified contact hours reported in the Summer 1, Summer 2, and Fall of the prior calendar year and Spring of the current calendar year relative to September 1st of the current fiscal year.

(8) Basic Allotment--A dollar value per Weighted FTSE, as determined by the Legislature based on appropriations made in that biennium's General Appropriations Act.

(9) Census Date--The date upon which a college may report a student in attendance for the purposes of formula funding, as specified in the Coordinating Board Management (CBM) manual for the year in which the funding is reported.

(10) Credential of Value--A credential earned by a student that would be expected to provide a positive return on investment. A positive return on investment is met when a typical student completing the credential is expected to earn cumulative wages greater than the cumulative median earnings of an average Texas high school graduate, plus recouping the net cost of attendance within ten years after earning the credential. This calculation shall include the student's opportunity cost, calculated as the difference between median earnings for a typical Texas high school graduate and typical earnings for students while enrolled for four years for baccalaureate degree holders, two years for associate degree holders, and one year for holders of a Level 1 certificate, Level 2 certificate, or Advanced Technical Certificate. The Coordinating Board shall calculate the expected return on investment based on the data available to the agency for the funding year. The calculation shall include the most current available data for each program or a comparable program.

(11) Credentialing examination--A licensure, certification, or registration exam provided by a state or national agency or by professional organization.

(12) Dual Credit or Dual Enrollment Fundable Outcome--A student who has earned at least 15 SCH or the equivalent of state-funded dual credit or dual enrollment courses that apply toward an academic or workforce program requirement at the postsecondary level. For the purpose of this subchapter, the term "dual credit or dual enrollment fundable outcome" includes the following fundable courses taken for college credit by a high school student who has not yet received a high school diploma:

(A) Any course taken for dual credit that is within the core curriculum of the college that is providing the course;

(B) A course in a Coordinating Board-established field of study curriculum under Texas Education Code, §61.823, or program of study curriculum under Texas Education Code, §61.8235;

(C) Career and technical education courses that apply to a certificate or associate degree offered by the institution providing the credit;

(D) Foreign language courses;

(E) All courses taken by students enrolled in an approved Early College High School program, with the exception of the physical education courses taken by high school students for high school physical education credit; and

(F) A course taken for college credit only by a student who is also enrolled in high school but does not yet have a high school diploma.

(13) Economically Disadvantaged--A designation that applies to postsecondary students who received the federal Pell Grant under 20 U.S.C. §1070a.

(14) Formula Funding--The funding allocated by the Coordinating Board among all public junior colleges by applying provisions of the Texas Education Code, agency rule, and the General Appropriations Act to a sector-wide appropriation from the General Appropriations Act.

(15) Full-Time Student Equivalent (FTSE)--A synthetic measure of enrollment based on the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the time period in question.

(16) Fundable Credential--A Fundable Credential counts toward Weighted Outcome Completions as defined in paragraph (27) of this section. For the purpose of funding delivered in fiscal year 2024, a fundable credential is defined as any of the following, except that, for credentials under subparagraph (B) or (C) of this paragraph, if more than one credential that the institution awarded to a student includes the same contact hours, the institution may only submit one credential for funding under subparagraph (B) or (C) of this paragraph.

(A) Any of the following credentials awarded by an institution that meets the criteria of a credential of value as defined in paragraph (10) of this section using the methodology established for the most current fiscal year, that is otherwise eligible for funding, and the institution reported and certified to the Coordinating Board:

- (i) An associate degree;
- (ii) A baccalaureate degree;
- (iii) A Level 1 or Level 2 Certificate; and
- (iv) An Advanced Technical Certificate.

(B) An Occupational Skills Award awarded by an institution that the institution reported and certified to the Board during fiscal year 2023; or

(C) An Institutional Credential Leading to Licensure or Certification (ICLC) not included in subparagraph (B) of this paragraph and that the institution reported and certified to the Coordinating Board during fiscal year 2023, that meets one of the following criteria:

(i) The credential includes no fewer than 144 contact hours or nine (9) semester credit hours; or

(ii) The credential is awarded in a high demand field, as defined in Board rule, and includes no fewer than 80 contact hours or five (5) semester credit hours; or

(iii) A licensure or certification earned by a student who did not receive a credential if the student:

(I) earned the licensure or certification as the result of the student's successful passage of a credentialing examination for a licensure or certification, while or after being enrolled in one of the institution's Institutional Credentials Leading to Licensure or Certification (ICLC) programs that would qualify for funding under clauses (i) or (ii) of this subparagraph; and

(II) earned the licensure or certification not later than twelve months after the student's enrollment in the ICLC program for which the student earned the licensure or certification.

(17) High-Demand Fields--An academic discipline, delineated by the federal Classification of Instructional Program (CIP) code, that the Coordinating Board has approved for inclusion on a

published list of High-Demand Fields, available at <https://www.highered.texas.gov/our-work/supporting-our-institutions/community-college-finance/high-demand-fields/>, based on their satisfaction of either:

(A) Inclusion on the list of Critical Fields employed for the purpose of determining formula funding allocations under the Student Success strategy in the 2022-2023 General Appropriations Act; or

(B) Appearing on the list of CIP codes resulting from the following methodology completed in Fall 2021:

(i) Extracting the top 25 occupations for each higher education region as ranked by their ten-year projected number of new openings, after having excluded those with an average wage less than the statewide median wage and those with a typical entry credential other than "Some college, no degree", "Postsecondary non-degree award", and "Associate degree", from the [texaslmi.com](https://www.texaslmi.com) website maintained by the Texas Workforce Commission;

(ii) Placing occupations appearing on at least seven of the ten resulting regional lists on a statewide list;

(iii) Adding to the statewide list any occupations appearing among the top five of one or more regional list but not yet on the statewide list; and

(iv) Generating a list of CIP codes populated by each four-digit CIP code associated with an occupation on the statewide list per the crosswalk promulgated by the National Center for Education Statistics of the U.S. Department of Education, which as of the effective date of this rule is available at the following address: <https://nces.ed.gov/ipeds/cipcode/post3.aspx?y=56>.

(18) Institutional Credentials Leading to Licensure or Certification (ICLC)--A credential awarded by an institution upon a student's completion of a course or series of courses that represent the achievement of identifiable skill proficiency and leading to licensure or certification. This definition includes a credential that meets the definition of an Occupational Skills Award in all respects except that the program did not obtain the required Workforce Development Board approval.

(19) Level 1 Certificate--A certificate designed to provide the necessary academic skills and the workforce skills, knowledge, and abilities necessary to attain entry-level employment or progression toward a Level 2 Certificate or an Applied Associate Degree, with at least 50% of course credits drawn from a single technical specialty. A Level 1 Certificate must be designed for a student to complete in one calendar year or less time and consists of at least 15 semester credit hours and no more than 42 semester credit hours.

(20) Level 2 Certificate--A certificate consisting of at least 30 semester credit hours and no more than 51 semester credit hours. Students enrolled in Level 2 Certificates must demonstrate meeting college readiness standards set forth in chapter 4, subchapter C, §4.57 of this title and other eligibility requirements determined by the institution.

(21) Local Share--The amount determined to be the institution's contribution of local funds to the Instruction and Operations (I&O) amount for each public junior college. The amount consists of estimated ad valorem maintenance and operations tax revenue and tuition and fees revenue, as determined by the Board.

(22) Non-Formula Support Item--An amount appropriated by line item in the General Appropriations Act to a single public junior college or limited group of colleges for a specific, named purpose.

(23) Occupational Skills Award--A sequence of courses that meet the minimum standard for program length specified by the

Texas Workforce Commission for the federal Workforce Innovation and Opportunity Act (WIOA) program (9-14 SCH for credit courses or 144-359 contact hours for workforce continuing education courses). An OSA must possess the following characteristics:

(A) The credential is TSI-waived under chapter 4, subchapter C, §4.54 of this title;

(B) The content of the credential must be recommended by an external workforce advisory committee, or the occupation must appear on the Local Workforce Development Board's Demand Occupations list;

(C) In most cases, the credential should be composed of Workforce Education Course Manual (WECM) courses only. However, non-stratified academic courses may be used occasionally if recommended by the external committee and if appropriate for the content of the credential;

(D) The credential complies with the Single Course Delivery guidelines for WECM courses; and

(E) The credential prepares students for employment in accordance with guidelines established for WIOA.

(24) Structured Co-Enrollment Fundable Outcome--A student who earns at least 15 semester credit hours at the junior college district in a Coordinating Board-recognized program structured through a binding written agreement between a general academic teaching institution and a community college. Under such a program, students will be admitted to both institutions and recognized as having matriculated to both institutions concurrently.

(25) Transfer Fundable Outcome--A student who enrolls in a general academic teaching institution, as defined in Texas Education Code, §61.003, after earning at least 15 semester credit hours from a single public junior college district during the period including the fiscal year in which they enroll at the general academic teaching institution and the four fiscal years prior.

(26) Weighted Full-Time Student Equivalent (Weighted FTSE or WFTSE)--A synthetic measure of enrollment equal to the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the time period in question, where the hours delivered to students with certain characteristics carry a value other than one.

(27) Weighted Outcomes Completion--A synthetic count of completions of designated student success outcomes where outcomes achieved by students with certain characteristics carry a value other than one. The synthetic count may also represent a calculation, such as an average or maximizing function, other than a simple sum.

§13.473. Base Tier Allotment.

(a) Board staff will calculate Base Tier funding for each public junior college district (district) as the greater of the Instruction and Operations (I&O) amount minus Local Share and zero.

(b) A district's I&O amount is the sum of the number of Weighted Full-Time Student Equivalents (Weighted FTSE) enrolled at the district multiplied by the Basic Allotment amount of \$1,275 and the district's total Contact Hour Funding as determined by the Coordinating Board.

(1) Weighted FTSE for each district is the sum of the district's full-time student equivalents weighted for the student characteristics under subparagraph (B) of this paragraph and the scale adjustment as provided in Texas Education Code, §130A.054.

(A) For purposes of determining annual Weighted FTSE as a component of Fiscal Year (FY) 2024 formula funding under

this section, a district's full-time student equivalents (FTSE) is equal to the sum of:

(i) the total semester credit hours in which for-credit students were enrolled at the district as of the census dates of all academic semesters or other academic terms that were reported for FY 2022, divided by 30; and

(ii) the total contact hours in which continuing education students were enrolled at the district as of the census dates of all academic semesters or other academic terms that were reported for FY 2022, divided by 900.

(B) The Coordinating Board shall additively weight the calculation of Weighted FTSE as follows:

(i) if a student is classified as economically disadvantaged during FY 2022, FTSE generated by that student shall have an additional value of 25%;

(ii) if a student is classified as academically disadvantaged during FY 2022, FTSE generated by that student shall have an additional value of 25%; and

(iii) if a student is classified as an adult learner during FY 2022, FTSE generated by that student shall have an additional value of 50%.

(C) The Coordinating Board calculates a district's scale adjustment weight as the greater of the difference between 5,000 and the number of FTSE as defined in subparagraph (A) of this paragraph multiplied by .40, and zero.

(2) For the purpose of calculating FY 2024 formula funding amounts, Coordinating Board staff will calculate Contact Hour Funding for a public junior college district by first multiplying the number of reported certified fundable contact hours generated by the district in each discipline during the 2023 Base Year, consisting of the Summer I and II 2022, Fall 2022, and Spring 2023 academic terms, by the average cost of delivery per contact hour for each discipline respectively as described in the Report of Fundable Operating Expenses for FY 2022 in accordance with subchapter R, §13.524(c) of this chapter (relating to Required Reporting) and summing across all disciplines. Contact hours attributable to students enrolled in a junior-level or senior-level course are weighed in the same manner as a lower division course in a corresponding field. That sum will then be multiplied by 21.3%, which is a rate derived from appropriations made for Base Tier Funding in the 2024-2025 General Appropriations Act, to calculate the district's Contact Hour Funding.

(c) For the purpose of calculating FY 2024 formula funding amounts, the Local Share for each public junior college district equals the sum of:

(1) the estimated amount of revenue that would have been generated by the district if it had assessed a \$0.05 maintenance and operations ad valorem tax on each \$100 of taxable property value in its taxing district, as reported under subchapter R, §13.524 of this chapter, which the Coordinating Board will calculate as the district's current tax collection for FY 2022 multiplied by the ratio of the maintenance and operations tax rate to the total tax rate, divided by the product of the maintenance and operations tax rate and 100 and multiplied by five; and

(2) the amount of tuition and fee revenue calculated as the sum of:

(A) the district's FY 2022 FTSE as defined in subsection (b)(1)(A) of this section, except for semester credit hours derived from students enrolled in dual credit or dual enrollment courses, multiplied

by \$2,828, which is the FY 2021 statewide average of tuition and fees assessed to full-time students residing within the district of the public junior college they attend; and

(B) the total semester credit hours of dual credit or dual enrollment courses in which students were enrolled as of the census dates of all academic semesters or other academic terms that were reported in FY 2022, multiplied by \$55, which is the dollar amount per dual credit semester credit hour determined by the Coordinating Board pursuant to Texas Education Code, §28.0095.

*§13.474. Performance Tier Funding.*

(a) Each public junior college district shall receive Performance Tier funding under Texas Education Code, Chapter 130A, Subchapter C. The Coordinating Board shall calculate a district's Performance Tier funding as the sum of Weighted Outcome Completions multiplied by the respective funded values of the outcomes.

(b) For the purposes of calculating formula funding amounts for Fiscal Year (FY) 2024, the Coordinating Board shall fund the Weighted Outcome Completions described below as follows:  
Figure: 19 TAC §13.474(b)

(c) For the purposes of calculating formula funding amounts for FY 2024, the Coordinating Board shall additively weight the calculation of outcomes in §13.473(b)(2), (3)(D), (E), and (F) of this subchapter (relating to Base Tier Allotment), as follows to calculate Weighted Outcome Completions.

(1) When an outcome is achieved by a student classified as economically disadvantaged, that outcome shall have an additional value of 25%.

(A) For purposes of calculating economically disadvantaged for transfer and credential fundable outcomes, the student must be classified as economically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(B) For purposes of calculating economically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as economically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at either the community college or general academic institution.

(2) When an outcome is achieved by a student classified as academically disadvantaged, that outcome shall have an additional value of 25%.

(A) For purposes of calculating academically disadvantaged for transfer and credential fundable outcomes, the student must be classified as academically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(B) For purposes of calculating academically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as academically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(3) When an outcome is achieved by a student classified as an Adult Learner, that outcome shall have an additional value of 50%.

(A) For purposes of calculating an Adult Learner for a transfer fundable outcome, the student must be classified as an Adult Learner in the year of last enrollment at the community college district prior to the transfer to a general academic institution.

(B) For purposes of calculating an Adult Learner for a fundable credential, the student must be classified as an Adult Learner in the fiscal year in which the fundable credential was awarded.

(C) For purposes of calculating an Adult Learner for Structured Co-Enrollment Fundable Outcome, the student must be classified as an Adult Learner in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(d) For the purposes of calculating Weighted Outcome Completions for formula funding amounts for FY 2024, the Coordinating Board shall calculate the funded number of Weighted Outcome Completions as the greater of the average of the district's Weighted Outcome Completion counts for FY 2020, FY 2021, and FY 2022 and the district's count for FY 2022.

*§13.475. Formula Transition Funding.*

In FY 2024, for purposes of transitioning to the new formula model, if the sum of a public junior college district's Base and Performance Tier funding as calculated in §13.473(a) and §13.474(a) of this subchapter (relating to Base Tier Allotment and Performance Tier Funding, respectively) would result in the district receiving less in General Revenue formula funding than the district received through the sum of appropriations made in the core operations strategy, student success strategy, contact hour funding strategy, and, if applicable, the need-based supplement and bachelor of applied technology strategies, as provided for FY 2023 in the 2022-23 General Appropriations Act, then the Coordinating Board will add transitional funding in the amount of the difference to the district's formula funding for FY 2024.

*§13.476. Payment Schedule.*

(a) Non-Formula Support Items. For the purpose of distributing state appropriations to a public junior college district in Fiscal Year (FY) 2024, the Coordinating Board shall distribute the full amounts of all FY 2024 non-formula support items to the district to which they are appropriated in accordance with the provisions of the General Appropriations Act for 2024-2025 by September 25, 2023. The Coordinating Board shall recover any overallocation or adjust any installment required to comply with state law or chapter 13 of this title (relating to Financial Planning).

(b) Formula Funding Amounts: Fall. For the purpose of distributing state appropriations to a public junior college district in FY 2024, the Coordinating Board shall distribute to each district by October 15, 2023, one-half of the formula funding amount it determines the district may be entitled to receive in FY 2024 pursuant to the provisions of the General Appropriations Act for 2024-2025, Texas Education Code, and all other pertinent statutes and rules.

(c) Formula Funding Amounts: Spring. For the purpose of distributing state appropriations to a public junior college district in FY 2024, the Coordinating Board shall distribute to each district by February 15, 2024, one-quarter of the formula funding amount it determines the district may be entitled to receive in FY 2024 pursuant to the provisions of the General Appropriations Act for 2024-2025, Texas Education Code, and all other pertinent statutes and rules.

(d) Formula Funding Amounts: Summer. For the purpose of distributing state appropriations to a public junior college district in FY 2024, the Coordinating Board shall distribute to each district by June 15, 2024, one-quarter of the formula funding amount it determines the college may be entitled to receive in FY 2024 pursuant to the provisions of the General Appropriations Act for 2024-2025, Texas Education Code, and all other pertinent statutes and rules, and in odd-numbered years shall distribute the formula funding amount likewise determined as soon as is practicable after June 15 in accordance with the appropriations process.

(e) The Coordinating Board may modify any installment under this schedule as necessary to provide an institution with the amounts to which the institution is entitled under Texas Education Code, Chapters 130 and 130A, the General Appropriations Act, or chapter 13 of this title.

§13.477. Close Out.

(a) On October 1 of each year, the Coordinating Board shall close out the prior fiscal year (FY) by reviewing, reconciling, and verifying distributions of formula funding to public junior colleges in the prior fiscal year.

(1) As applicable, the Coordinating Board shall adjust a public junior college's first payment under subsection (b) of this section by an amount necessary to deliver the correct funding owed to the public junior college under Texas Education Code, Chapters 130 and 130A, or this subchapter for the prior fiscal year.

(2) The Coordinating Board will determine the correct funding for a public junior college based on the final certified data reported by the institution that serves as the basis of formula funding for that year, as provided by this chapter.

(3) This close out process may result in additional or reduced funding to the college based on the reported data and funding delivered for the fiscal year that is being closed out.

(b) If the Commissioner of Higher Education in his or her sole discretion determines that an adjustment under subsection (a) of this section will have a substantial negative impact on the operations of the institution or the education of students, the Coordinating Board may correct the institution's funding by recovering payments as an over-allocation pursuant to subchapter R, §13.528(d)(1) or (2) of this chapter (relating to Recovery of Overallocated Funds). For the purpose of FY24, the Coordinating Board will not adjust formula funding for a public junior college for a fiscal year subsequent to close out except as set out in this section and subchapter R of this chapter (relating to State Public Junior College Finance Program Reporting, Audit, and Over-allocation).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2023.

TRD-202303637

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 427-6548



## SUBCHAPTER Q. FINANCIAL AID FOR SWIFT TRANSFER (FAST) PROGRAM

### 19 TAC §§13.500 - 13.506

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter Q, §§13.500 - 13.506, concerning Financial Aid for Swift Transfer (FAST) Program. Specifically, these new sections will outline the authority and purpose, definitions, institutional eligibility requirements, student eligibility requirements, tuition rate, funding formula, and the handling

of overallocations, which are necessary to administer the FAST Program.

Rule 13.500 indicates the specific sections of the Texas Education Code (TEC) that provide the Coordinating Board with authority to issue these rules, as well as the purpose of the FAST Program.

Rule 13.501 provides definitions for words and terms within FAST rules. The definitions are proposed to provide clarity for words and terms that are integral to the understanding and administration of the FAST rules. This section is proposed based on TEC, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Rule 13.502 outlines the requirements that institutions must fulfill to participate in the FAST Program. The requirements are proposed to: (a) gather in one place both statutory requirements, such as the requirement that an institution must meet the definition of institution of higher education outlined in TEC, Section 61.003, and rule requirements implementing the FAST Program; (b) clarify aspects of the statutory requirements, such as the institution's responsibility to provide dual credit coursework at no cost to eligible students attending high school in Texas school districts or charter schools; and (c) provide rules specific to requirements the Coordinating Board is proposing to ensure effective administration of the FAST Program, such as the requirement that each participating institution enter into an agreement with the Coordinating Board. This section is proposed based on TEC, Section 28.0095(j), which directs the Board to adopt rules as necessary to implement the FAST Program.

Rule 13.503 outlines the eligibility requirements that students must meet to allow an institution to enroll the student in dual credit coursework at no cost to the student under the FAST Program. The requirements are proposed to: (a) gather in one place the statutory requirements for the FAST Program, including the requirements related to a student's enrollment and their prior status as educationally disadvantaged; (b) clarify aspects of the statutory requirements, such as the student needing to be enrolled in and eligible for Foundation School Program funding at a high school in a Texas school district or charter school; (c) provide rules to clarify eligible dual credit enrollment, which requires that participating institutions must have entered into a Dual Credit Agreement with the student's school district; (d) provide rules specific to requirements the Coordinating Board is proposing to ensure effective administration of the FAST Program, such as the requirement that school districts and charter schools will fulfill their reporting requirements for the educationally disadvantaged status through notice to the Texas Education Agency; and (e) request reporting from institutions necessary to identify students as "educationally disadvantaged" from data provided by Texas Education Agency (TEA). This section is proposed based on TEC, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Rule 13.504 sets the FAST maximum tuition rate for the 2023-2024 academic year and is based on a review of average dual credit tuition rates, to allow for the FAST Program to begin in the fall 2023 semester. The proposed rule provides how an annual inflationary adjustment to the tuition rate will be calculated, the timeline in which the annual rate will be determined and announced to institutions of higher education and when the announced rate goes into effect. TEC, Section 28.0095(d), directs

the Coordinating Board to prescribe the maximum tuition rate for the FAST Program in rule.

Rule 13.505 establishes the mechanisms by which the Coordinating Board will disburse funding to each participating institution to support their participation in the FAST Program, as well as the institutions' participation in the process. The proposed rule provides the frequency of disbursements to each institution; the way the disbursement amount will be calculated for each institution; the data that will be used to complete the calculation; the way institutions will have the opportunity to review the calculation for accuracy; and the true-up process, which confirms a student's attendance in high school during the dual credit course enrollment and requires reductions to future disbursements of FAST funding once an amount is calculated. This section is proposed based on TEC, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Rule 13.506 references the overallocation rules for the FAST Program. The rule acknowledges that the program is one aspect of the larger effort to provide funding to support institutions in their work to successfully educate students and is thus subject to the overallocation rules outlined in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter R. This section is proposed based on TEC, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to implement the FAST program. However, participation in the program is voluntary for institutions of higher education. Fiscal implication of the potential for increased funding to institutions of higher education is funded as part of the FAST program in statute and the General Appropriations Act. Additional ancillary costs to institutions that choose to participate are assumed within the fiscal note for the legislation. The rules do not impose additional costs of compliance beyond those provided in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increase in the number of educationally disadvantaged students who complete post-secondary coursework during high school, thus accelerating the attainment of post-secondary credentials necessary to support the Texas economy. Students and the state may realize additional benefits as the risk of credits that will not transfer to an institution of higher is reduced. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Participation in the FAST program is voluntary. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

## Government Growth Impact Statement

- (1) the rules will create a government program required by House Bill 8, 88th Texas Legislature, Regular Session;
- (2) implementation of the rules will require the creation of employee positions, as required by House Bill 8;
- (3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency, as provided in House Bill 8;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, Section 28.0095, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the FAST Program.

The proposed new section affects Texas Education Code, Sections 28.0095 and 48.308.

### §13.500. Authority and Purpose.

(a) Unless otherwise noted in a section, the authority for these provisions is provided by Texas Education Code, §§28.0095 and 48.308.

(b) This subchapter establishes rules relating to the administration of the Financial Aid for Swift Transfer (FAST) Program. The program provides institutions with funding to support their ability to allow educationally disadvantaged students to enroll in dual credit coursework at no cost to the student.

### §13.501. Definitions.

In addition to the words and terms defined in §13.1 of this chapter (relating to Definitions) the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. In the event of conflict, the definitions in this subchapter shall control.

(1) Charter School--a public charter school authorized to operate under Texas Education Code, Chapter 12.

(2) Dual Credit Course--a course offered through an agreement under section 4.84 of this Part for joint high school and junior college credit under Texas Education Code, §130.008, or for another course offered by an institution of higher education, for which a high school student may earn semester credit hours or continuing education contact hours toward satisfaction of:

(A) a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree;

(B) a foreign language requirement at an institution of higher education;

(C) a requirement in the core curriculum, as that term is defined by Texas Education Code, §61.821, at an institution of higher education; or

(D) a requirement in a field of study curriculum developed by the coordinating board under Texas Education Code, §61.823.

(3) Educationally disadvantaged--as defined in Texas Education Code, §5.001(4), eligible to participate in the national free or reduced-price lunch program.

(4) Equivalent of a semester credit hour--16 contact hours.

(5) Program--the Financial Aid for Swift Transfer (FAST) Program.

(6) School Year--the twelve month-period of high school enrollment starting in August.

§13.502. Eligible Institution.

(a) A public institution of higher education, as the term is defined in Texas Education Code, §61.003(8), is eligible to participate in the Program.

(b) A participating institution may not charge students attending high school in a Texas school district or charter school a tuition rate for dual credit courses in excess of the tuition rate outlined in §13.504 of this subchapter (relating to FAST Tuition Rate).

(c) A participating institution must ensure that an eligible student incurs no cost for their enrollment in any dual credit course at the institution. This includes, but is not limited to, tuition, fees, books, supplies, or other course-related expenses. This subsection does not prohibit a participating institution from charging a school district for course-related expenses, other than tuition, for an eligible student.

(d) Agreement. Each eligible institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner prior to being approved to participate in the program.

§13.503. Eligible Students.

(a) A student is eligible to enroll at no cost to the student in a dual credit course under the program if the student:

(1) is enrolled in and eligible for Foundation School Program funding at a high school in a Texas school district or charter school under the rules of the Texas Education Agency;

(2) is enrolled in a dual credit course at a participating institution of higher education that has entered into a Dual Credit Agreement with the student's school district as set out in §4.84 of this title (relating to Institutional Agreements); and

(3) was educationally disadvantaged at any time during the four school years preceding the student's enrollment in the dual credit course described by paragraph (2) of this subsection, as certified to the institution by the eligible student's school district or charter school, or other means authorized by rule.

(b) A school district's or charter school's notice to the institution regarding a student's status as educationally disadvantaged shall occur through the school district's or charter school's notice to the Texas Education Agency, unless otherwise provided by rule.

(c) A participating institution shall submit to the Coordinating Board identifying information, as outlined by the Coordinating Board, for students registered for or enrolled in dual credit courses. The Coordinating Board will compare the identifying information to data provided by the Texas Education Agency and will notify the institution as to which students fulfill the requirement outlined in subsection (a)(3) of this section.

§13.504. FAST Tuition Rate.

(a) The maximum tuition rate prescribed for a dual credit course through this program is \$55 per semester credit hour or equivalent of a semester credit hour in the 2023-2024 academic year.

(b) The Commissioner shall use the Consumer Price Index for the preceding 12 months as calculated by the U.S. Bureau of Labor Statistics, to apply an annual inflationary adjustment to the FAST tuition rate.

(c) The Commissioner shall determine and announce the annual FAST tuition rate not later than the final day of January prior to the start of each fiscal year.

(d) The annual tuition rate announced per subsection (c) of this section takes effect in the fall semester following the announcement.

§13.505. FAST Funding Formula.

(a) Frequency of Disbursements. The Coordinating Board will provide each participating institution with a disbursement for each fall, spring, and summer semester upon the certification of the institution's eligible enrollments. The Coordinating Board will combine enrollment periods under this subsection when a semester includes more than one enrollment period (for example, a Summer 1 and a Summer 2 session).

(b) Disbursement Calculation. Each disbursement will equal the amount outlined in §13.504 of this subchapter (relating to FAST Tuition Rate) for the relevant semester multiplied by the number of semester credit hours or equivalent in which students who met the eligibility criteria in §13.503 of this subchapter (relating to Eligible Students) were enrolled in dual credit courses at the institution for the relevant semester.

(c) Data Sources. The source of data for the disbursement calculation will be reports collected by Board staff and certified by the institution for the relevant semester which provide an eligible student's dual credit enrollment in semester credit hours or their equivalent and the student's Texas Student Data System (TSDS) unique identification number issued by the Texas Education Agency, combined with data regarding educationally disadvantaged students, as reported by the Texas Education Agency, unless otherwise provided by rule.

(d) Verification of Data. The Coordinating Board will share each semester's calculation with the participating institution for comment and verification prior to disbursement. The institution will be given ten business days, beginning the day of the notice's distribution, and excluding State holidays, to confirm that the calculation accurately reflects the data they submitted or to advise the Coordinating Board of any inaccuracies.

(e) True-Up. Upon receipt of attendance data for the full school year from the Texas Education Agency, the Coordinating Board will review all eligible students used in the calculation outlined in subsection (d) of this section to verify that those students were in attendance at the high school during the period of dual credit enrollment. If any student is identified as not having been in attendance in high school during the period of dual credit enrollment, then the Coordinating Board will calculate the amount of funding the institution received for that student's dual credit enrollment. The Coordinating Board shall reduce each institution's subsequent disbursement under subsection (a) of this section by the amount calculated in this subsection.

§13.506. Overallocation.

Funding provided to an institution under this subchapter shall be subject to subchapter R of this chapter (relating to State Public Junior College Finance Program Reporting, Audit, and Overallocation).



The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



## SUBCHAPTER R. STATE PUBLIC JUNIOR COLLEGE FINANCE PROGRAM REPORTING, AUDIT, AND OVERALLOCATION

### 19 TAC §§13.520 - 13.529

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter R, §§13.520 - 13.529, concerning the certification of compliance, required reporting, correction of errors, audit, and overallocation for the new State Public Junior College Finance Program. Specifically, this new section will establish rules that set out policies and procedures for public junior colleges to submit certifications of compliance and submit required reporting through various reporting collection mechanisms established by the Coordinating Board. The rules also describe how the Coordinating Board will conduct audits, review of required reporting for data errors, and correct those errors through either a payment of under-allocated funds or the recovery of over-allocated funds.

Rule 13.520 sets out the purpose of the subchapter, which is to establish definitions, certification of compliance, data reporting, audit, and correction of error requirements, as well as over-allocation and under-allocation procedures, necessary to implement the State Public Junior College Finance Program.

Rule 13.521 provides the authority for the chapter, which is established pursuant to Texas Education Code, §§28.0095, 61.035, 61.065, 130.003, and 130A.006-130A.009.

Rule 13.522 lists definitions used in the subchapter. These definitions establish consistent terminology within the subchapter and mirror commonly used definitions established elsewhere in the Coordinating Board's rules. The legislation establishing the State Public Junior College Finance Program permits the Coordinating Board to adopt rules as necessary to implement Texas Education Code, Chapters 61, 130, and 130A (Texas Education Code, §130A.005).

Rule 13.523 contains the policy and procedures necessary for public junior colleges to submit certifications of compliance with statute and rules. H.B. 8 requires public junior colleges to submit attestations of compliance, including compliance with all state laws and Coordinating Board rules, as a condition of receiving state funds (Texas Education Code, §§61.063 and 130.003(b)). These sections of statute also provide for the Coordinating Board to establish the manner in which public junior colleges make this attestation. Rule 13.523 therefore contains deadlines and stipulates the content of the attestation, and provides for resolution in

the event of unresolved audit findings, establishing clear guidelines for institutions to comply with statute.

Rule 13.524 describes the required financial and academic reporting for institutions to submit the data necessary for the Coordinating Board to administer the State Public Junior College Finance Program. The Coordinating Board collects data through a variety of established mechanisms: the Community College Annual Reporting and Analysis Tool, Annual Financial Report Reporting, the Report of Fundable Operating Expenses, Education Data Systems reporting, and through ad hoc reporting as necessary. The data from these tools provides a cornerstone of the financial modeling necessary to determine precise funding amounts for the public junior colleges. This rule describes the uses of data from required reporting and states the standards and review processes for these reporting mechanisms. This rule implements Texas Education Code, §130A.006, which states that the Coordinating Board may establish reporting requirements as necessary to administer the finance program.

Rule 13.525 establishes the process for the Commissioner of Higher Education (Commissioner) to review required reporting for errors and formally establish when a data reporting error resulting in a material impact in formula funding was made. Statute permits the Coordinating Board to review the accuracy of data reported to the Coordinating Board for any errors (Texas Education Code, §130A.007). This section establishes parameters and expectations for the methods the Coordinating Board will use to detect data errors. In addition, this section establishes the method used by the Commissioner to make a formal determination of a data reporting error requiring a funding adjustment, an important preliminary step to start off the processes for recovering overallocated funds or disbursing under-allocated funds.

Rule 13.526 provides for compliance monitoring and auditing of funds disbursed under the new finance model for public junior colleges. Texas Education Code, §61.035, provides for the agency to conduct compliance monitoring of funds allocated to all institutions of higher education, including public junior college. This section establishes parameters and expectations of internal audit offices at institutions for data collection and examination assistance by the internal audit offices as institutional resources allow. In addition, this section contains information regarding reporting of ongoing or completed audits involving funds administered or allocated by or data reported to the Coordinating Board.

Rule 13.527 states that institutions must retain records for a period of no less than seven years for purposes of Coordinating Board review. Coordinating Board staff chose this time period to mirror the timeline of seven years in the statute, which states that the Coordinating Board may not review expenditures made by junior colleges occurring seven or more years in the past (Texas Education Code, §130A.009(e)).

Rule 13.528 lays out the process for the Coordinating Board to recover overallocated funds in the event a public community college has received more funding than was due. This section provides how the Coordinating Board will provide notice to institutions of an error finding and lays out an appeal process for institutions. This rule implements the recovery of overallocated funds provision of H.B. 8 (Texas Education Code, §130A.009).

This rule establishes a process for institutions of higher education to receive notice and have the opportunity to submit relevant information to appeal to the Commissioner in the case where the Coordinating Board may need to make an adverse funding adjustment. The procedures established for overallocation un-

der §13.528(d) ensure the Coordinating Board is accurately disbursing appropriated funds as intended by the Legislature, while also providing flexibility for the method used to recoup the funds. This flexibility includes providing an option to recover a sum in a lump payment under §13.528(d)(1)(B), or alternatively over a five-year timespan under §13.528(d)(2), as authorized by H.B. 8. The flexibility is intended to limit extreme adverse financial impacts to public junior colleges that might detrimentally impact institutional operations, local communities, and students served by the institution, while still carrying out the Coordinating Board's obligation to disburse appropriated funds according to law.

Rule 13.529 likewise establishes how the Coordinating Board may make a financial adjustment in light of finding that an institution was allocated less in funding than was due. H.B. 8 provides for the Commissioner to adjust funds for the purpose of accuracy (Texas Education Code, §13A.007) and authorizes adjustment to installment under Texas Education Code, §130.0031. In addition, the General Appropriations Act provides that the Coordinating Board may make adjustments in the case of shortfall for the biennium (General Appropriations Act, Article IX, Contingency and Other Provisions, Section 18.04, Subsection 16 (2023)). The Coordinating Board intends to disburse appropriated funds with fidelity to appropriators' intent; this section allows for the agency to make institutions whole in the event of a shortfall due to a data reporting error or other error.

Paul Maeyaert, Interim Assistant Commissioner for Internal Audit and Compliance, has determined that for each of the first five years the sections are in effect there may be minimal fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to implement the new community college finance program established by H.B. 8. The bill provides for the adjustment of funds relating to data reporting errors as well as a mechanism to recoup overallocated funds in Texas Education Code, §§130A.007 and 130A.009. The rules do not impose additional costs of compliance beyond those provided in statute.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Paul Maeyaert, Interim Assistant Commissioner for Internal Audit and Compliance, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the establishment of rules to implement changes to the certification of compliance, required reporting, correction of errors, audit, and overallocation for the new community college finance system, as established in Tex. H.B. 8, 88th Leg., R.S. (2023). This subchapter will establish a framework to ensure appropriated funds for public junior colleges are correctly spent. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will create a government program, as required by House Bill 8;
- (2) implementation of the rules will require the creation of employee positions, as required by House Bill 8;
- (3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency, as provided in House Bill 8;

- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Paul Maeyaert, Interim Assistant Commissioner for Internal Audit and Compliance, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules to implement and administer the Public Junior College State Finance Program.

The proposed new sections affect Texas Education Code §§28.0095, 61.035, 61.065, 130.003, 130A.006-130A.009, and 130.0031.

#### §13.520. Purpose.

The purpose of this subchapter is to establish the definitions, certification of compliance, data reporting, audit, and correction of error requirements for institutions of higher education, as well as over-allocation and under-allocation procedures, under the State Public Junior College Finance Program (the Program). The subchapter further specifies the process for recovery of overallocated funds as required by statute. These provisions additionally apply to audit and overallocation of funds under the Financial Aid for Swift Transfer (FAST) Program.

#### §13.521. Authority.

The Coordinating Board adopts this subchapter pursuant to its authority under Texas Education Code, §§28.0095, 61.035, 61.063, 61.065, 130.003, and 130A.006-130A.009.

#### §13.522. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Audit--An engagement to audit the program conducted by the Coordinating Board's Internal Auditor and internal audit or compliance monitoring staff pursuant to either Texas Education Code, §§130A.006(4) or 61.035. This term may include a site visit, desk review, or examination of the institution's use of funds allocated by the Coordinating Board and data reported to the Coordinating Board. The term includes auditing undertaken to obtain evidence to sufficiently examine or verify data submitted to the Coordinating Board to be used by the Coordinating Board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(2) Census Date--As defined in subchapter P, §13.472, of this chapter (relating to Definitions).

(3) Chief Audit Executive--The Internal Auditor hired by the Coordinating Board to perform internal auditing and compliance monitoring on behalf of the Coordinating Board pursuant to Texas Education Code, Chapters 61, 130, and 130A.

(4) Compliance Monitoring--A risk-based audit and compliance function conducted by the Coordinating Board pursuant to either Texas Education Code, §§130A.006(4) or 61.035, for the purpose

of reviewing and assessing programmatic, legal, and fiscal compliance. This function may include conducting audits, site visits, desk reviews, or other examinations, to ensure that funds allocated or distributed by the Coordinating Board are allocated, distributed, and used in accordance with applicable law and Coordinating Board rule. The function includes obtaining evidence to sufficiently examine or verify data submitted to the Coordinating Board to be used by the Coordinating Board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(5) Data Reporting Error--An error in data or other information reported and certified by a public junior college to the Coordinating Board that the Commissioner of Higher Education in his or her discretion determines may result in a material impact in the formula funding a public junior college was entitled to or received.

(6) Desk Review--An administrative review by the Coordinating Board that is based on information reported by an institution of higher education or a private or independent institution of higher education, including supplemental information required by the Coordinating Board for purposes of compliance monitoring, except that the term does not include information or accompanying notes gathered by the Coordinating Board during a site visit.

(7) Full-Time Student Equivalent (FTSE)--As defined in subchapter P, §13.472, of this chapter.

(8) Funding Adjustment--Any increase or decrease in funding by the Coordinating Board to an institution of higher education based on an over- or under-allocation of funds.

(9) Over-allocation--The over-payment of funds to a public junior college due to a data reporting error or other error by either the institution or the Coordinating Board that results in payments beyond what the institution is due.

(10) Site Visit--An announced or unannounced in-person visit by a representative of the Coordinating Board or its agent to an institution of higher education or a private or independent institution of higher education for the purposes of conducting an audit.

(11) Under-allocation--The under-payment of funds to a public junior college due to a data reporting error or other error by either the institution or the Coordinating Board that results in payments less than what the institution was owed for the fiscal year.

#### §13.523. Certification of Compliance.

(a) A public junior college is not eligible to receive funds under this subchapter unless that public junior college submits a certification of compliance with the requirements of Texas Education Code, §130.003(b), and as stated herein.

(b) A public junior college must submit an attestation via email to CTC@highered.texas.gov certifying to compliance with Texas Education Code, §130.003(b), to the Coordinating Board by August 1 of each year. The certification must be signed by the public junior college's president, or Chief Executive Officer, as applicable. The certification must certify the following:

(1) That the public junior college is currently in compliance with each provision of Texas Education Code, §130.003; and

(2) The public junior college has complied with all laws and Coordinating Board rules for the establishment and operation of a public junior college.

(c) If a junior college district has an unresolved or ongoing audit finding that the certifying official determines may preclude the district's certification under Texas Education Code, §130.003(b), the

district shall disclose the finding(s) and provide an explanation of the finding(s) and proposed resolution.

(1) The Commissioner of Higher Education shall determine whether the junior college district can demonstrate that the district will be in compliance for the purpose of receiving a scheduled payment.

(2) Any payment that the Coordinating Board makes to an institution pursuant to this subchapter is subject to recovery or recoupment if the certifying official does not make the required certification for the fiscal year for which the certification was required.

#### §13.524. Required Reporting.

(a) Required Reporting. A public junior college must submit data through required reporting mechanisms established by the Coordinating Board. The Coordinating Board may use information obtained through required reporting for:

(1) calculating funding disbursed under this chapter;

(2) providing timely data and analyses to inform management decisions by the governing body of each public junior college district;

(3) administering or evaluating the effectiveness of programs; or

(4) auditing the program.

(b) Financial Reporting: The Community College Annual Reporting and Analysis Tool (CARAT) and Annual Financial Report (AFR) Reporting.

(1) Standards. Each public junior college district must submit their Annual Financial Report (AFR) for the preceding fiscal year by January 1. The public junior college must submit the AFR following the requirements provided in the Coordinating Board's Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, also known as the AFR Manual, for that fiscal year, in accordance with Texas Education Code, §61.065.

(2) Format. Each public junior college must report AFR data for each completed fiscal year as prescribed in the Community College Reporting and Analysis Tool (CARAT) by January 31 of the following fiscal year.

(3) Review Process. The Commissioner of Higher Education will update the AFR Manual, as required by Texas Education Code, §61.065. The AFR Manual will conform to Governmental Accounting Standards Board (GASB) statements and guidance.

(c) Financial Reporting: Report of Fundable Operating Expenses (RFOE).

(1) Standards. Each public junior college must report all instructional expenses from each completed fiscal year for each institutional discipline and unallocated administrative expenses as defined in the RFOE by January 31 of the following fiscal year.

(2) Coordinating Board staff shall use the data provided on expenses at public junior colleges to produce a study of costs for each instructional discipline each year. This study will review all expenses made by institutions for instruction and administration from all unrestricted sources of funds, including appropriated general revenue, tuition and fees, contract instruction, other educational and general revenue, and local tax revenue.

(d) Academic Reporting: Education Data System reporting.

(1) Standards. Each public junior college must use data standards established by the Commissioner of Higher Education to sub-

mit required information relating to the delivery of educational programs. The Commissioner of Higher Education shall adopt and publish annually data standards in official Coordinating Board publications, including through the Coordinating Board Management (CBM) Reporting and Procedures Manual for Texas Community, Technical, and State Colleges. The Coordinating Board will widely disseminate this publication, which will include:

(A) descriptions of the data collections and submission requirements;

(B) descriptions of data elements and the codes used to report them, including data used to calculate Full-Time Student Equivalent enrollments, Texas Success Initiative eligibility of students, student transfer, dual credit or dual enrollment, the number and type of credentials conferred, and other relevant student characteristics;

(C) detailed responsibilities of public junior colleges in connection to the data submission process, including each deadline for submission and resubmission; and

(D) descriptions of data submission requirements, including submission record layout specifications and data edit specifications.

(2) A public junior college may report a student in attendance on the approved course census date for the purpose of funding under this subchapter, in accordance with Texas Education Code, §130A.008.

(3) Review Process. The Commissioner of Higher Education shall review the CBM Reporting and Procedures Manuals annually. The Commissioner of Higher Education may approve changes to the data and reporting standards outside of the annual review process to expedite implementation of data collections and reporting.

(4) Certification. The reporting official for each public junior college must certify the accuracy of the report by a certification statement submitted to the Coordinating Board's Educational Data Center in accordance with the template and instructions provided in the CBM Reporting and Procedures Manual.

(e) Academic Reporting: Ad Hoc Reporting Requests. As necessary to implement this chapter, the Commissioner of Higher Education may determine the need for additional, limited, supplemental requests for data and information from public junior colleges. To the extent Ad Hoc Reporting Requests may determine or influence funding disbursements under this subchapter, the Coordinating Board shall require the reporting official or another Coordinating Board designated official for each public junior college to certify the accuracy of the information contained in the report.

§13.525. Commissioner Review of Required Reporting: Data Reporting Errors.

(a) The Commissioner of Higher Education at his or her discretion or upon recommendation of the Chief Audit Executive may direct Coordinating Board staff to review the accuracy of the data reported to the Coordinating Board by public junior colleges under this subchapter using any of the following methods or combination thereof:

(1) The Chief Audit Executive or Coordinating Board staff may conduct periodic file reviews, desk-reviews, site visits, or audits of the accuracy of the data and information submitted for funding purposes, including regular reviews of submitted data carried out through standard data management, supporting data, audits conducted under this subchapter, or as a result of any other audit. Upon identifying a data reporting error that may impact formula funding, Coordinating Board staff shall notify the Commissioner of Higher Education as soon as practicable.

(2) Upon receiving a notification from the Chief Audit Executive or Coordinating Board staff of a potential data reporting error, the Commissioner of Higher Education may:

(A) direct staff to continue to gather additional information;

(B) determine that the discrepancy does not rise to the level of a data reporting error as defined in this chapter due to the materiality impact of the error; or

(C) determine that the discrepancy rises to the level of a data reporting error that requires a funding adjustment due to the materiality impact of the error or the amount of overallocation or underallocation.

(b) The Coordinating Board may review and or require correction of a data reporting error that occurred not more than seven years prior to a review conducted by Coordinating Board staff.

(c) Upon the Commissioner of Higher Education's determination that the discrepancy constitutes a data reporting error requiring a funding adjustment, staff will notify the public junior college within 30 business days.

(d) The Commissioner of Higher Education may use any method provided in §13.528 or §13.529 of this subchapter to make the necessary funding adjustments to correct an over- or under-allocation.

§13.526. Public Junior College Audits.

(a) A public junior college shall report financial and academic data to the Coordinating Board under §13.524 of this subchapter (relating to Required Reporting).

(b) The Chief Audit Executive may conduct compliance monitoring or audits of public junior colleges' compliance with Texas Education Code, Chapter 130A, the General Appropriations Act, and other related formula funding statutes.

(c) In conducting an audit or compliance monitoring under this section, the Coordinating Board may request the assistance of the internal audit office at an institution of higher education and private or independent institution of higher education, as institutional resources allow, to examine the institution's use of funds allocated by, and data reported to, the Coordinating Board.

(d) To avoid duplication of effort and assist the Coordinating Board in identifying risk, an internal auditor at an institution shall notify the Coordinating Board of any audits conducted by the institution's internal or external auditor involving funds allocated or administered by the Coordinating Board or data reported to the Coordinating Board.

§13.527. Records Retention.

An institution of higher education shall retain records related to financial and educational data and information reported to the Coordinating Board under Chapter 13 for a period of not less than seven years.

§13.528. Recovery of Overallocated Funds.

(a) If the Coordinating Board determines after closing out a fiscal year pursuant to subchapter P, §13.477, of this chapter (relating to Close Out), that a data reporting error or any other error resulted in an overallocation of funds to the institution, the Coordinating Board shall use any method authorized under statute or this rule to make a funding adjustment necessary to correct the over-allocation.

(b) The Coordinating Board shall notify the institution not later than 30 business days after the Commissioner of Higher Education makes a determination of a data reporting error under §13.525 of this subchapter (relating to Commissioner Review of Required

Reporting; Data Reporting Errors) or otherwise identifies an error requiring a funding adjustment to recover an overallocation. This notification must contain the amount of the overallocation and the basis for the determination.

(c) The institution may submit a written appeal to the Commissioner of Higher Education within 30 business days of receiving notification of an overallocation. The institution may attach any data or other written documentation that supports its appeal. The Commissioner of Higher Education shall review the appeal and determine in his or her sole discretion whether to affirm, deny, or modify the determination of overallocation within 30 business days of receipt. The Commissioner of Higher Education or Chief Audit Executive shall make an annual report of overallocation determinations to the Board.

(d) If the institution does not appeal or the Commissioner of Higher Education affirms the determination that an overallocation requiring a funding adjustment has occurred, the Coordinating Board shall recover an amount equal to the amount overallocated to the public junior college through one of the following methods:

(1) The Coordinating Board shall:

(A) withhold an amount equivalent to the overallocation by withholding from subsequent allocations of state funds for the current fiscal year as part of the close out of the current fiscal year; or

(B) request and obtain a refund from the public junior college during the current fiscal year an amount equivalent to the amount of the overallocation; or

(C) If the Commissioner of Higher Education in his or her sole discretion determines that the recovery of an overallocation in the current or subsequent fiscal year will have a substantial negative impact on the operations of the institution or the education of students, the Commissioner of Higher Education may instead recover the overallocation pursuant to subsection (d)(2) of this section.

(2) If the Commissioner of Higher Education in his or her sole discretion determines that an overallocation pursuant to paragraphs (1) or (2) of this section was the result of exceptional circumstances reasonably caused by statutory changes to Texas Education Code, Chapters 130 or 130A, and related reporting requirements, the Coordinating Board may recover the overallocation over a period not to exceed the subsequent five fiscal years.

(e) In addition to the recovery of an over-allocation under this section, the Commissioner of Higher Education may establish a corrective action plan for a public junior college that has received an over-allocation of funds.

(f) If the public junior college fails to comply with an agreement to submit a refund established under this section, the Coordinating Board must report to the Comptroller of Public Accounts for recovery pursuant to Texas Education Code, Section 130A.009.

*§13.529. Payment of Under-allocated Funds.*

If the Commissioner of Higher Education determines that a data reporting error or any other error resulted in an under-allocation of funds, the Coordinating Board shall provide the funds to the institution pursuant to the close-out process in subchapter P, §13.477, of this chapter (relating to Close Out) or as otherwise authorized by law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson  
General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548

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CHAPTER 15. NATIONAL RESEARCH  
UNIVERSITIES  
SUBCHAPTER C. NATIONAL RESEARCH  
UNIVERSITY FUND

**19 TAC §§15.40 - 15.44**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 15, Subchapter C, §§15.40 - 15.44, concerning the National Research University Fund (NRUF). Specifically, the Coordinating Board plans to repeal this subchapter in accordance with changes made by Tex. H.B. 1595, 88th Leg., R.S. (2023). This repeal presumes passage of House Joint Resolution 3, 88th Leg., R.S. (2023), the vote for which would take place November 7, 2023. If the constitutional amendment is approved, the provisions of H.B. 1595 go into effect on January 1, 2024.

Rules 15.40 - 15.42 establish the purpose, authority and definitions related to the NRUF. Rule 15.43 establishes the precise criteria for eligibility to receive a distribution from the NRUF and Rule 15.44 provides for the process by which institutions report data on the criteria to the Coordinating Board and the Coordinating Board certifies eligibility of an institution to receive an NRUF distribution to the Comptroller and State Auditor's Office.

As part of the changes assumed to be enacted by H.B. 1595, statute eliminates the NRUF and recreates it as the Texas University Fund (TUF). Specifically, the Coordinating Board plans to repeal these rules and replace them with a new section outlining the eligibility, distribution methodology, and reporting requirements for the TUF.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is compliance in Texas Administrative Code with the elimination of the National Research University Fund, in accordance with the provisions of Tex. H.B. 1595, 88th Leg., R.S. (2023), which recreates the National Research University Fund as the Texas University Fund, with new eligibility requirements and allocation methodologies. There are no anticipated eco-

conomic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [funding@highered.texas.gov](mailto:funding@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed in accordance with changes made by Tex. H.B. 1595, 88th Leg., R.S. (2023), which eliminates the National Research University Fund and re-creates it as the Texas University Fund.

The proposed repeal affects Texas Education Code, §§62.141 - 62.149.

§15.40. *Purpose.*

§15.41. *Authority.*

§15.42. *Definitions.*

§15.43. *Eligibility.*

§15.44. *Accounting and Reporting.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2023.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 427-6548



## CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §22.1

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter A, General Provisions,

§22.1, concerning definitions. Specifically, this amendment will modify the definitions based on the consensus reached by the negotiated rulemaking committee on the Texas Educational Opportunity Grant (August 2, 2023).

Rule 22.1, Definitions, is amended to remove the definition of "entering undergraduate." The definition has been moved to the individual subchapters that are affected by the definition, specifically, subchapter L, §22.226, of this chapter for the Towards Excellence, Access, and Success (TEXAS) Grant Program, and subchapter M, §22.254, of this chapter for the Texas Educational Opportunity Grant Program. The amendment also adds the definition for "equivalent of a semester credit hour." The definition is added to bring clarity to the multiple references to this equivalency in Subchapter M. The definitions of Board, the Commissioner, and the Coordinating Board are also amended to provide greater clarity to these terms.

Texas Education Code, §61.07761, requires the Coordinating Board to establish and publish the allocation methodologies and to develop procedures to verify the accuracy of the application of those allocation methodologies by Coordinating Board staff.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the expanded student eligibility and greater institutional flexibility for the Texas Educational Opportunity Grant Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments

will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.0331, which provides the Coordinating Board with the authority to undertake negotiated rulemaking when proposing a rule relating to the allocation or distribution of funds, including financial aid or other trusteed funds.

The proposed amendment affects Texas Education Code, Chapter 56, Subchapter P.

§22.1. *Definitions.*

The following words and terms, when used in Chapter 22, shall have the following meanings, unless otherwise defined in a particular subchapter:

(1) Academic Year--The combination of semesters defined by a public or private institution of higher education to fulfill the federal "academic year" requirement as defined by 34 CFR 668.3.

(2) Attempted Semester Credit Hours--Every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. For transfer students, transfer hours and hours for optional internship and cooperative education courses are included if they are accepted by the receiving institution towards the student's current program of study.

(3) Awarded--Offered to a student.

(4) Board [~~or Coordinating Board~~]--The governing body of the agency known as the Texas Higher Education Coordinating Board [~~The Texas Higher Education Coordinating Board~~].

~~{(5) Board Staff--The staff of the Texas Higher Education Coordinating Board.}~~

(5) ~~{(6) Categorical Aid--Gift aid that the institution does not award to the student, but that the student brings to the school from a non-governmental third party.~~

(6) ~~{(7) Commissioner--[The] Commissioner of Higher Education[, the Chief Executive Officer of the Board].~~

(7) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board and its staff.

(8) Cost of Attendance/Total Cost of Attendance--An institution's estimate of the expenses incurred by a typical financial aid recipient in attending a particular institution of higher education. It includes direct educational costs (tuition and fees) as well as indirect costs (room and board, books and supplies, transportation, personal expenses, and other allowable costs for financial aid purposes).

(9) Degree or certificate program of four years or less--A baccalaureate degree, associate degree, or certificate program other than a program determined by the Board to require four years or more [~~less~~] to complete.

(10) Degree or certificate program of more than four years--A baccalaureate degree or certificate program determined by the Board to require more than four years to complete.

(11) Encumber--Program funds that have been officially requested by an institution through procedures developed by the Coordinating Board.

(12) Equivalent of a semester credit hour--16 contact hours.

~~{(12) Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours~~

taken during dual enrollment in high school and courses for which the student received credit through examination.}

~~(13) Expected Family Contribution (EFC)--A measure of how much the student and his or her family can be expected to contribute to the cost of the student's education for the year as determined following the federal methodology.~~

~~{(13) Expected Family Contribution (EFC)-- A measure of how much the student and his or her family can be expected to contribute to the cost of the student's education for the year as determined following the federal methodology. }~~

(14) Financial Need--The Cost of Attendance at a particular public or private institution of higher education less the Expected Family Contribution. The Cost of Attendance and Expected Family Contribution are to be determined in accordance with Board guidelines.

(15) Full-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of twelve or more semester credit hours per semester. For graduate students, enrollment or expected enrollment for the normal full-time course load of the student's program of study as defined by the institution.

(16) Gift Aid--Grants, scholarships, exemptions, waivers, and other financial aid provided to a student without a requirement to repay the funding or earn the funding through work.

(17) Graduate student--A student who has been awarded a baccalaureate degree and is enrolled in coursework leading to a graduate or professional degree.

(18) Half-Time--For undergraduates, enrollment or expected enrollment for the equivalent of at least six but fewer than nine semester credit hours per regular semester. For graduate students, enrollment or expected enrollment for the equivalent of 50 percent of the normal full-time course load of the student's program of study as defined by the institution.

(19) Period of enrollment--The semester or semesters within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all eligibility requirements for an award through this program.

(20) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including the determination of student eligibility, selection of recipients, maintenance of all records, and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the institution's chief executive officer, the director of student financial aid shall serve as Program Officer.

(21) Residency Core Questions--A set of questions developed by the Coordinating Board to be used to determine a student's eligibility for classification as a resident of Texas, available for downloading from the Coordinating Board's website, and incorporated into the ApplyTexas application for admission.

(22) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(23) Semester--A payment period, as defined by 34 CFR 668.4(a) or 34 CFR 668.4(b)(1).

(24) Three-Quarter-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of at least nine but fewer than 12 semester credit hours per semester. For graduate students, enrollment or expected enrollment for the equivalent of 75 per-

cent of the normal full-time course load of the student's program of study as defined by the institution.

(25) Timely Distribution of Funds--Activities completed by institutions of higher education related to the receipt and distribution of state financial aid funding from the Board and subsequent distribution to recipients or return to the Board.

(26) Undergraduate student--An individual who has not yet received a baccalaureate degree.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 427-6365



## SUBCHAPTER K. TEXAS TRANSFER GRANT PROGRAM

### 19 TAC §§22.200 - 22.210

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter K, §§22.200 - 22.210, concerning Texas Transfer Grant Program. Specifically, these new sections will outline the authority and purpose, definitions, institutional eligibility requirements, student eligibility requirements, satisfactory academic progress requirements, discontinuation of eligibility, hardship provisions, priorities in making grants, grant amounts, allocation of funds, and disbursement of funds, which are necessary to administer the Texas Transfer Grant Program.

Rule 22.200 indicates the specific sections of the Texas Government Code that provides the agency with authority to issue these rules, as well as the purpose of the Texas Transfer Grant Program.

Rule 22.201 provides definitions for words and terms within the Texas Transfer Grant Program rules. The definitions provide clarity for words and terms that are integral to the understanding and administration of the rules.

Rule 22.202 outlines the eligibility requirements that institutions must fulfill to participate in the program. The requirements are proposed to align with the Towards EXcellence, Access, and Success (TEXAS) Grant Program, as both programs serve students in the same institutional sector.

Rule 22.203 outlines the eligibility requirements that a student must meet to allow an institution to provide the students with a grant through the program. The proposed requirements include expectations that exist within the TEXAS Grant program, such as the requirement to be a Texas resident, to show financial need, to be enrolled in a baccalaureate degree program, to make satisfactory academic progress, and to comply with applicable Selective Service registration expectations. The proposed requirements also include expectations that are specifically tar-

geted toward achieving the public benefit of the program, such as full-time enrollment, having completed associate degrees with at least a 2.5 grade point average at a public two-year institution to include completion of the core curriculum or an abbreviated core curriculum related to a specific approved field of study curriculum, and enrolling in a baccalaureate degree program at an eligible institution within one year of ceasing to be enrolled in a two-year public institution.

Rule 22.204 outlines the satisfactory academic progress that students must achieve to receive a grant through the program. The proposed requirement allows the participating institution to use satisfactory academic progress guidelines already in place for determining eligibility for federal financial aid programs.

Rule 22.205 outlines the situations in which a student is not eligible to receive a grant through the program. To acknowledge the goal of assisting students in completing degrees, a student may not receive a grant after completion of a baccalaureate degree. To acknowledge the limited state resources available for financial aid programs, a student may not simultaneously receive a grant through this program and the TEXAS Grant program. To encourage timely completion of a baccalaureate degree, a student may not receive a grant after having been enrolled in the baccalaureate program for two years (three years if the degree program is more than four years), nor may the student receive the grant after attempting 135 semester credit hours.

Rule 22.206 outlines provisions that permit an institution to develop a policy that allows an otherwise ineligible student to receive a grant through the program when unique hardships justify an exception. The provisions are proposed to align with similar provisions in the TEXAS Grant program. When justified and documented, these provisions may be used in relation to a student enrolling less than full-time, failing to meet satisfactory academic progress requirements, maintaining enrollment for more than two years (three years if the degree program is more than four years), attempting more than 135 semester credit hours, or failing to enroll in a baccalaureate program within one year of ceasing to be enrolled in a two-year public institution.

Rule 22.207 outline priorities that institutions will use in determining how to select grant recipients when funding does not allow for all eligible recipients to receive grants through the program. Similar justifications exist in the TEXAS Grant program. Priority would first go toward prior recipients. For first-time recipients, priority would go to those who have demonstrated an expected family contribution that does not exceed the expected family contribution used for similar purposes in the TEXAS Grant program, with highest priority given to eligible students with the highest levels of academic achievement prior to transfer as determined by the participating institution.

Rule 22.208 outlines the maximum grant amount that a participating institution may provide to an eligible student. The maximum grant amount will be aligned with the maximum grant amounts calculated for the TEXAS Grant program under §22.234 of this chapter.

Rule 22.209 provides the allocation formula that will be used to determine the amount of funding that each participating institution will be provided for the program. The allocation formula is modeled after the criteria utilized in the allocation methodology for first-time recipients of the TEXAS Grant program. This rule is proposed based on Texas Education Code, §61.07761, which directs the Coordinating Board to establish and publish allocation



methodologies and develop procedures to verify the accuracy of the calculations.

Rule 22.210 outlines the way the Coordinating Board will use to disburse funding to participating institutions. This rule aligns with the way the Coordinating Board disburses funding for other state financial aid grant programs.

Unless otherwise noted, these sections are proposed based on General Appropriations Act, 88th Leg. R.S., H.B. 1, art. III-52 ch. 1170, Rider 56, which authorizes the Coordinating Board to administer programs and trusteed funds for financial aid and other grants as necessary to achieve the state's long-range goals and as directed by the legislature. Rule making to administer the Texas Transfer Grant Program is authorized by Texas Administrative Procedure Act, Texas Government Code §2001.003(6) which requires the agency to prescribe law or policy via rule making.

Dr. Charles W. Contero-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to implement the program. However, participation in the program is voluntary for institutions of higher education. Fiscal implication of the potential for increased funding to institutions of higher education is funded as part of the General Appropriations Act. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contero-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increase in the number of economically disadvantaged students who transfer on to public universities to complete baccalaureate degrees, thus accelerating the attainment of post-secondary credentials necessary to support the Texas economy. Students and the state may realize additional benefits as the risk of credits that will not transfer to an institution of higher education is education is reduced. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will create a government program required by House Bill 1, Article III, Texas Higher Education Coordinating Board, Section 56;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;

(7) the rules will change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles W. Contero-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Administrative Procedure Act, Texas Government Code §2001.003(6) which requires the agency to prescribe law or policy via rule making.

The proposed new sections affect General Appropriations Act, 88th Leg. R.S., H.B. 1, art. III-52 ch. 1170, Rider 56.

#### §22.200. Authority and Purpose.

(a) Unless otherwise noted in a section, the authority for these provisions is provided by Texas Administrative Procedure Act, Texas Government Code §2001.003(6).

(b) This subchapter establishes rules relating to the administration of the Texas Transfer Grant Program. The program provides need-based grants to enable eligible students to transfer from two-year institutions of higher education to four-year institutions of higher education in this state.

#### §22.201. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. In the event of conflict, the definitions in this subchapter shall control.

(1) Encumbered Funds--Funds ready for disbursement to the institution, based on the institution having submitted to the Board the required documentation to request funds.

(2) Grant--A Texas Transfer Grant provided through the Texas Transfer Grant Program.

(3) Program--The Texas Transfer Grant Program.

#### §22.202. Eligible Institutions.

(a) Eligibility.

(1) Institutions eligible to make grants through the program are medical or dental units, as the term is defined in Texas Education Code, §61.003(5), and general academic teaching institutions, other than public state colleges, as the term is defined in Texas Education Code, §61.003(16).

(2) No participating institution may, on the grounds of race, color, national origin, gender, religion, age, or disability exclude an individual from participation in, or deny the benefits of the program described in this subchapter.

(3) Each participating institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions or employment.

(b) Approval.

(1) Agreement. Each eligible institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner, prior to being approved to participate in the program.

(2) Approval Deadline.

(A) An institution must indicate an intent to participate in the program by June 1 and enter into an agreement with the Coordinating Board by August 31 for qualified students enrolled in that institution to be eligible to receive grants in the following biennium.

(B) Notwithstanding subsection (A), for the 2023-2024 academic year, an institution may indicate intent to participate in the program by the administrative deadline established by the Commissioner.

(c) Responsibilities. A participating institution is required to abide by the General Provisions outlined in subchapter A of this chapter.

§22.203. Eligible Students.

To qualify for a grant through the Program, a student must:

(1) have Texas resident status, as determined by chapter 21, subchapter B of this title (relating to Determination of Resident Status);

(2) show financial need in the semester(s) in which a grant is offered;

(3) have applied for any available financial aid assistance;

(4) be enrolled in a baccalaureate degree program at an eligible institution;

(5) be enrolled full-time in the semester(s) in which a grant is offered unless granted a hardship waiver of this requirement under §22.206 of this subchapter (relating to Hardship Provisions);

(6) make satisfactory academic progress toward the baccalaureate degree at the eligible institution, as defined in §22.204 of this subchapter (relating to Satisfactory Academic Progress) unless the student is granted a hardship extension in accordance with §22.206 of this subchapter (relating to Hardship Provisions);

(7) have been awarded an associate degree by a public junior college as defined in Texas Education Code, §61.003(2); public technical institute as defined in Texas Education Code, §61.003(7); or public state college as defined in Texas Education Code, §61.003(16), and credit hours earned toward completion of the associate degree must:

(A) include completion of the core curriculum or an abbreviated core curriculum related to a specific approved field of study curriculum transferable to one or more general academic teaching institutions; and

(B) have been completed with at least a 2.5 grade point average.

(8) unless granted a hardship postponement in accordance with §22.206 of this subchapter (relating to Hardship Provisions), have enrolled in the baccalaureate degree program at the eligible institution on a full-time basis not later than the end of the 12th month after the calendar month in which the student ceased being enrolled in a public junior college as defined in Texas Education Code, §61.003(2); public technical institute as defined in Texas Education Code, §61.003(7); or public state college as defined in Texas Education Code, §61.003(16); and

(9) meet applicable standards outlined in §22.3 of this chapter (relating to Student Compliance with Selective Service Registration).

§22.204. Satisfactory Academic Progress.

To qualify for a grant, each recipient of the grant shall meet the satisfactory academic progress requirements as utilized by the financial

aid office of the eligible institution to determine eligibility for federal financial aid programs.

§22.205. Discontinuation of Eligibility or Non-Eligibility.

(a) A student may not receive a grant after having already been granted a baccalaureate degree by any institution.

(b) A student may not receive a grant while simultaneously receiving a Toward EXcellence, Access, and Success (TEXAS) Grant.

(c) Unless granted a hardship postponement in accordance with §22.206 of this subchapter (relating to Hardship Provisions), a student's eligibility for a grant ends:

(1) two years from the start of the semester in which the student enrolls in the baccalaureate degree program at the eligible institution on a full-time basis, if the student is enrolled in a degree program of four years or less; or

(2) three years from the start of the semester in which the student enrolls in the baccalaureate degree program at the eligible institution on a full-time basis if the student is enrolled in a degree program of more than four years.

(d) A student's eligibility for a grant ends once he or she has attempted 135 semester credit hours or the equivalent unless the student is granted a hardship extension in accordance with §22.206 of this subchapter (relating to Hardship Provisions).

(e) Other than as described in §22.206 of this subchapter (relating to Hardship Provisions), if a student fails to meet any of the requirements for receiving a continuation grant as outlined in §22.203 of this subchapter (relating to Eligible Students) after completion of any semester, the student may not receive a grant until he or she completes a semester while not receiving a grant and meets all the requirements as outlined in §22.203 of this subchapter (relating to Eligible Students) as of the end of that semester.

§22.206. Hardship Provisions.

(a) In the event of a hardship, the Program Officer at an eligible institution may allow an otherwise eligible student to receive a grant under the following conditions:

(1) while enrolled in fewer semester credit hours than required in §22.203(5) of this subchapter (relating to Eligible Students);

(2) if the student fails to meet the satisfactory academic progress requirements of §22.203(6) of this subchapter (relating to Eligible Students);

(3) if the student requires an extension of the limits found in §22.205(c) of this subchapter (relating to Discontinuation of Eligibility or Non-Eligibility) to complete his or her degree; or

(4) if the student has attempted more hours than allowed under §22.205(d) of this subchapter (relating to Discontinuation of Eligibility or Non-Eligibility). However, the total number of hours paid for, at least in part, with grant funds may not exceed 150 semester credit hours or the equivalent.

(b) Hardships are not limited to, but include:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or

(3) the requirement of fewer than twelve hours to complete one's degree plan.

(c) The Program Officer may allow a student to receive a grant after the time limits described in Section 22.203(8) (relating to Eligible Students) if the student and/or the student's family has suffered a hardship that would now make the student rank as one of the institution's neediest.

(d) Documentation justifying the eligibility granted through the hardship provisions outlined in this rule must be kept in the student's file. Each institution must identify to the Coordinating Board those students granted eligibility through hardship provisions so that the Coordinating Board may appropriately monitor each student's period of eligibility.

(e) Each participating institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.207. Priorities in Grants to Students.

(a) If state appropriations for the program are insufficient to allow grants to all eligible students, each institution shall give priority to eligible students who have previously received a grant through the program.

(b) In determining first-time recipients of grants through the program, an institution shall give priority to those students who have an expected family contribution that does not exceed 60 percent of the average statewide amount of tuition and fees for general academic teaching institutions, other than public state colleges, as the term is defined in Texas Education Code, §61.003(16), for the relevant academic year. The Coordinating Board shall determine and announce this value for a given state fiscal year by January 31 of the prior fiscal year.

(c) In determining first-time recipients of grants through the program, an institution shall give highest priority to eligible students meeting criteria specified under subsection §22.207(b) (relating to Priorities in Grants to Students) who have also demonstrated the highest levels of academic achievement prior to transfer as determined by the participating institution.

§22.208. Grant Amounts.

(a) Funding. The Coordinating Board may not award through this program an amount that exceeds the amount of state appropriations and other funds that are available for this use.

(b) Grant Amounts.

(1) The Commissioner shall determine and announce the maximum grant amounts in a given state fiscal year by January 31 of the prior fiscal year. The calculation of the maximum amount will be consistent with the maximum grant forward for TEXAS Grant for the semester as set out in subchapter L of this chapter (relating to Toward Excellence, Access, and Success (TEXAS) Grant Program).

(2) An institution may not reduce the amount of a grant by any gift aid for which the student receiving the grant is eligible, unless the total amount of a student's grant plus any gift aid received exceeds the student's cost of attendance. However, a student's grant shall not be greater than the amount of the student's financial need.

(c) The Commissioner shall make grant calculations in accordance with §22.11 of this chapter (relating to Provisions specific to the TEXAS Grant, TEOG, TEG, and Texas Work-Study Programs).

§22.209. Allocation of Funds.

(a) The Commissioner shall determine allocations on an annual basis as follows:

(1) The allocation base for each eligible institution will be the number of students it reported in the most recent certified Financial Aid Database submission who met the following criteria:

(A) were enrolled as undergraduate students and had not yet received a Bachelor's degree;

(B) were classified as having resident status, as determined by chapter 21, subchapter B of this title (relating to Determination of Resident Status);

(C) were enrolled full-time in either the fall or spring semester; and

(D) have a nine-month Expected Family Contribution, less than or equal to the amount established in §22.207(b) of this subchapter (relating to Priorities in Grants to Students) for the year reported in the Financial Aid Database submission.

(2) Each institution's percentage of the available funds will equal its percentage of the state-wide number of students who meet the criteria in paragraph (1) of this subsection.

(3) The Commissioner will complete allocations for both years of the biennium at the same time. The Coordinating Board will use the three most recent certified Financial Aid Database submissions to forecast the data utilized in the calculation of the allocation for the second year of the biennium. The Coordinating Board will provide each institution with notification of their allocations for both years of the biennium at the same time.

(b) Verification of Data. The Coordinating Board will share allocation calculations with each participating institution for comment and verification prior to final posting. Each institution will have ten business days, beginning the day of the notice's distribution, and excluding State holidays, to confirm that the allocation report accurately reflects the data the institution submitted or to advise the Coordinating Board of any inaccuracies.

(c) Reductions in Funding.

(1) If annual funding for the program is reduced after the start of a fiscal year, the Commissioner may use any method necessary to distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in each institution's allocation.

(2) If annual funding is reduced prior to the start of a fiscal year, the Commissioner may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

§22.210. Disbursement of Funds.

Upon request by an institution throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students. Each institution shall have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, an institution may lose any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium are deemed returned to the Coordinating Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2023.

TRD-202303641



## SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

### 19 TAC §22.226

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter L, §22.226, concerning definitions for the Toward EXcellence, Access, and Success (TEXAS) Grant. Specifically, this amendment will make non-substantive conforming changes based on the consensus reached by the negotiated rulemaking committee on Texas Educational Opportunity Grant Program (August 2, 2023).

Rule 22.226, Definitions, is amended to add the definition of "entering undergraduate." This definition is being removed from Chapter 22, Subchapter A, General Provisions, and added to Chapter 22, Subchapter L, TEXAS Grant Program, verbatim to maintain consistency in the TEXAS Grant Program. Subsequent definitions have been appropriately renumbered.

Texas Education Code, §61.0331, requires negotiated rulemaking when adopting a rule related to the allocation or distribution of funding, including financial aid and other trusteed funds. Texas Education Code, §61.07761, requires the Coordinating Board to establish and publish the allocation methodologies and to develop procedures to verify the accuracy of the application of those allocation methodologies by Coordinating Board staff.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the non-substantive conforming changes required to support the negotiated rulemaking activities to expand student eligibility and provide greater institutional flexibility for the Texas Educational Opportunity Grant Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.0331, which provides the Coordinating Board with the authority to undertake negotiated rulemaking when adopting a rule relating to the allocation or distribution of funds, including financial aid or other trusteed funds.

The proposed amendment affects Texas Education Code, Chapter 56, Subchapter M.

#### §22.226. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions) [~~Chapter~~], the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Continuation grant--A TEXAS Grant offered to a person who has previously received an initial year grant.

(2) Degree program of four years or less--A baccalaureate degree program, other than a program determined by the Board to require more than four years to complete.

(3) Degree program of more than four years--A baccalaureate degree program determined by the Board to require more than four years to complete.

(4) Encumbered Funds--Funds ready for disbursement to the institution, based on the institution having submitted to the Board the required documentation to request funds.

(5) Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(6) [(5)] General Academic Teaching Institution--As the term is defined in Texas Education Code, §61.003(3).

(7) [(6)] Initial year grant--The TEXAS Grant offered in the student's first year in the TEXAS Grant Program, typically made up of a fall and spring disbursement.

(8) [(7)] Medical or dental unit--As the term is defined in Texas Education Code, §61.003(5).

(9) [(8)] Public Institution--As the term, institution of higher education, is defined in Texas Education Code, §61.003(8).

(10) [(9)] Prior-prior year--For allocation purposes, the state fiscal year that began two years earlier than the fiscal year for which the allocation is being calculated.

(11) [(10)] Private Institution--As the term, private or independent institution of higher education, is defined in Texas Education Code, §61.003(15).

(12) [(11)] Program--The Toward EXcellence, Access and Success (TEXAS) Grant program.

(13) [(12)] Public state college--As the term is defined in Texas Education Code, §61.003(16).

(14) [(13)] Required fees--A mandatory fee (required by statute) or discretionary fee (authorized by statute, imposed by the governing board of a public institution) and that a public institution charges to a student as a condition of enrollment at the public institution or in a specific course.

(15) [(14)] Target grant amount--An amount set by the Coordinating Board, in consultation with public institutions participating in the TEXAS Grant Program, and used as the recommended average grant amount for the TEXAS Grant Program for a biennium and in establishing renewal year allocations to participating public institutions as described in §22.236(a)(1) of this title (relating to Allocation and Reallocation of Funds).

(16) [(15)] Tuition--Statutory tuition, designated and/or Board-authorized tuition.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 427-6365



## SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

### 19 TAC §§22.254, 22.256 - 22.259, 22.261, 22.262, 22.264

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter M, §§22.254, 22.256 - 22.259, 22.261, 22.262, and 22.264, concerning Texas Educational Opportunity Grant. Specifically, the proposed amendments are necessary to implement the substantive changes upon which the Negotiated Rulemaking Committee on Texas Educational Opportunity Grant reached consensus (August 2, 2023).

Rule 22.254 is amended to add the definition of "certificate program" and to alter the definition of "entering undergraduate." The negotiated rulemaking committee defined "certificate program" to acknowledge the role that certificate programs play in achieving the state's goals as outlined in *Building a Talent Strong Texas*. The definition provides institutions with greater flexibility to acknowledge the broadening range of credentials that support the

success of Texans. The negotiated rulemaking committee increased the number of credit hours under which a student will be considered an entering undergraduate. The change provides eligible institutions with greater flexibility to acknowledge the variety of pathways that students may take to starting an associate degree or certificate program.

Rule 22.256 is amended to make a non-substantive change. The text defining "entering undergraduate" was removed from §22.226 of this chapter and added to §22.256 verbatim to maintain consistency in the TEXAS Grant program.

Rule 22.257 is amended to include language acknowledging semester credit hour equivalency. The acknowledgment of semester hour equivalency exists throughout subchapter M but had been inadvertently left out of §22.257.

Rule 22.258 is amended to correct a non-substantive grammatical error.

Rule 22.259 is amended to include language acknowledging semester credit hour equivalency. The acknowledgment of semester hour equivalency exists throughout subchapter M but had been inadvertently left out of §22.259. The rule is also amended to acknowledge certificate programs, which are acknowledged throughout subchapter M but had been inadvertently left out of §22.259.

Rule 22.261 is amended to alter the calculation of the maximum grant program. The amended calculation recognizes both in-district and out-of-district resident students. The negotiated rulemaking committee views this change as a better representation of the grant calculation outlined in Texas Education Code, Section 56.407(a). The amendment will require an alteration to the manner in which institutions calculate a data element submitted through the Coordinating Board's Integrated Fiscal Reporting system which is used for this purpose. The rule is also amended to reflect the statutory change enacted by House Bill 8, 88th Texas Legislature, Regular Session. The amendment provides eligible institutions clarity regarding the statutory change and its effective date. The amendment also makes non-substantive changes to remove redundant text.

Rule 22.262 is amended to make non-substantive changes that remove outdated references to prior amendments, provide clarity to amendments completed during prior negotiated rulemaking activities, and remove text that is being moved to new rule §22.265 of this chapter

Rule 22.264 is amended to make non-substantive changes that remove outdated references to prior amendments, provide clarity to amendments completed during prior negotiated rulemaking activities, and remove text that is being moved to new rule §22.265 of this chapter.

Texas Education Code, §61.0331, requires negotiated rulemaking when adopting a rule related to the allocation or distribution of funding, including financial aid and other trusted funds. Texas Education Code, §61.07761, requires the Coordinating Board to establish and publish the allocation methodologies and to develop procedures to verify the accuracy of the application of those allocation methodologies by Coordinating Board staff.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of en-

forcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the sections will be the expanded student eligibility and greater institutional flexibility for the Texas Educational Opportunity Grant Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.0331, which provides the Coordinating Board with the authority to undertake negotiated rulemaking when adopting a rule relating to the allocation or distribution of funds, including financial aid or other trusteed funds.

The proposed amendment affects Texas Education Code, Chapter 56, Subchapter P.

#### §22.254. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Certificate Program--For purposes of the Texas Educational Opportunity Grant Program, Level 1 and Level 2 certificates, Occupational Skills Awards, and other credentials of value as defined in §13.472 of this chapter (relating to Definitions). These include programs offered through semester credit hours or the equivalent of semester credit hours.

(2) [(+) Continuation Award--A grant awarded to a person who has previously received an initial year award.

(3) Entering undergraduate--A student enrolled in the first 45 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(4) [(2)] Forecast--The FORECAST function in Microsoft Excel.

(5) [(3)] Grant--Funds awarded to a student through the Texas Educational Opportunity Grant Program.

(6) [(4)] Initial year award--The grant award made in the student's first year in the Program.

(7) [(5)] Program--The Texas Educational Opportunity Grant Program.

#### §22.256. Eligible Students.

(a) To receive an initial year award through the Program, a student must:

- (1) be a resident of Texas;
- (2) show financial need;
- (3) have applied for any available financial aid assistance;
- (4) be enrolled at a participating institution on at least a half-time basis as an entering student [~~which is a student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination~~]; and
- (5) be enrolled in an associate degree or certificate program at a participating institution.

(b) To receive a continuation award through the Program, a student must:

- (1) have previously received an initial year award through this program;
- (2) show financial need;
- (3) be enrolled on at least a half-time basis;
- (4) be enrolled in an associate degree or certificate program at an eligible institution; and
- (5) make satisfactory academic progress towards an associate degree or certificate, as defined in §22.257 of this subchapter (relating to Satisfactory Academic Progress).

#### §22.257. Satisfactory Academic Progress.

(a) Eligibility at End of Initial Year Award. Students who complete their first year receiving a grant in compliance with their institutions' financial aid academic progress requirements are eligible to receive continuation awards in the following year if they meet the other requirements listed in §22.256 of this subchapter (relating to Eligible Students).

(b) Eligibility at End of a Continuation Award. Students shall, unless granted a hardship provision in accordance with §22.259 of this subchapter (relating to Hardship Provisions), as of the end of an academic year in which the student receives a continuation award:

- (1) complete at least 75% of the semester credit hours or their equivalent attempted in the student's most recent academic year; and
- (2) maintain an overall cumulative grade point average of at least 2.5 on a four-point scale or its equivalent.

(c) The calculation of a student's GPA is to be completed in accordance with Subchapter A of this chapter (relating to General Provisions).

(d) The completion rate calculations may be made in keeping with institutional policies.

§22.258. *Discontinuation of Eligibility or Non-Eligibility.*

(a) A student may not receive a grant while concurrently receiving a TEXAS Grant.

(b) A student may not receive a grant after having been granted an associate or baccalaureate degree.

(c) A student's eligibility for the program ends once a student has attempted 75 semester credit hours or the equivalent, unless the student is granted a hardship extension in accordance with §22.259 of this subchapter (relating to Hardship Provisions).

(d) A student's eligibility for the program ends four years from the start of the semester in which the student received an initial year award, unless the student is granted a hardship extension in accordance with §22.259 of this subchapter.

(e) A person is not eligible to receive a grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a grant.

(f) Other than as described in §22.259 of this subchapter, if a person fails to meet any of the requirements for receiving a continuation award as outlined in §22.256 of this subchapter (relating to Eligible Students) after completion of any year, the person may not receive a grant until after completing a semester of at least half-time coursework while not receiving a grant and meeting [meets] all the requirements of §22.256 of this subchapter as of the end of that semester.

§22.259. *Hardship Provisions.*

(a) In the event of a hardship or for other good cause, the Program Officer at a participating institution may allow an otherwise eligible student to receive a grant;

(1) while maintaining a grade point average below the required level, as defined in §22.257 of this subchapter (relating to Satisfactory Academic Progress);

(2) while maintaining a completion rate below the required level, as defined in §22.257 of this subchapter;

(3) while enrolled less than half time;

(4) while enrolled in semester credit hours in excess of the attempted hour limit, as defined in §22.258(c) of this subchapter (relating to Discontinuation of Eligibility and Non-Eligibility), though the total number of semester credit hours paid for, at least in part, with program funding may not exceed 75 or its equivalent; or

(5) while enrolled beyond the time limit restrictions, as defined in §22.258(d) of this subchapter.

(b) Hardship conditions may include, but are not limited to:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or

(3) the requirement of fewer than six semester credit hours or their equivalent to complete one's degree or certificate plan.

(c) Documentation of the hardship circumstances approved for a student to receive a grant must be kept in the student's files, and the institution must identify students approved for a grant based on a hardship to the Coordinating Board, so that it may appropriately monitor each student's period of eligibility.

(d) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.261. *Grant Amounts [and Adjustments].*

(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, grants, and other funds that are available for this use.

(b) Grant Amounts.

(1) The amount of a grant may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the student's cost of attendance. However, no student's grant shall be greater than the amount of the student's financial need.

(2) ~~[The]~~ Board staff shall determine and announce the maximum grant amount in a given state fiscal year by January 31 of the prior fiscal year. The calculation of the maximum grant amount for a semester will be based on the average statewide amount of tuition and required fees at eligible institutions that a ~~[an in-district]~~ resident student enrolled full-time in an associate degree or certificate program measured in semester credit hours would be charged for that semester (Texas Education Code, §56.407).

(3) In determining the maximum grant amount, the average amount of tuition and required fees is determined by institution type (public junior colleges, public state colleges, and public technical institutes) [for an in-district resident student enrolled full-time in an associate degree or certificate program], utilizing the most recent Integrated Fiscal Reporting System reports to project the value.

(c) An approved institution may not charge a person receiving a grant through that institution an amount of tuition and required fees in excess of the grant received by the person. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a grant. If an institution's tuition and fee charges exceed the grant, it may address the shortfall in one of two ways:

(1) it may use other available sources of financial aid ~~[, other than a loan or Pell grant]~~ to cover any difference in the amount of the grant and the student's actual amount of tuition and required fees at the institution, provided that:

(A) for grants offered for semesters prior to the 2024 fall semester, the other available sources of financial aid do not include a loan or Pell Grant; and

(B) for grants offered beginning with the 2024 fall semester, the other available sources of financial aid do not include a loan; or

(2) it may waive the excess charges for the student. However, if a waiver is used, the institution may not report the recipient's tuition and fees in a way that would increase the general revenue appropriations to the institution.

(d) ~~Grant calculations [Adjustments to grants and late disbursements]~~ are to be completed in accordance with Subchapter A of this chapter (relating to General Provisions).

*§22.262. Allocation [and Disbursement] of Funds - Public Junior Colleges.*

(a) ~~[Allocations for public junior colleges for Fiscal Year 2016 and Later.]~~ Allocations are to be determined on an annual basis as follows:

(1) The allocation base for each eligible institution will be the number of students it reported in the most recent certified Financial Aid Database submission who met the following criteria:

(A) were classified as Texas residents,

(B) were enrolled as undergraduates in an associate degree or certificate program half-time, three-quarter time or full-time, and

(C) have a 9-month Expected Family Contribution, calculated using federal methodology, less than or equal to the Federal Pell Grant eligibility Expected Family Contribution cap for the year reported in the Financial Aid Database submission.

(2) Each institution's percent of the available funds will equal its percent of the state-wide need as determined by multiplying each institution's enrollments by the respective award maximums of students who meet the criteria in subsection (a)(1) of this section.

(3) ~~Allocations [Beginning with allocations for Fiscal Year 2020, allocations]~~ for both years of the state appropriations' biennium will be completed at the same time. The three most recent certified Financial Aid Database submissions will be utilized to forecast the data utilized in the calculation of the allocation for the second year of the biennium. Institutions will receive notification of their allocations for both years of the biennium at the same time.

(4) Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting and the institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the data they submitted or to advise Board staff of any inaccuracies.

~~[(b) Disbursement of Funds to Institutions. As requested by institutions throughout the academic year, the Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students. Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Board for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.]~~

~~(b) [(e)] Reductions in Funding.~~

(1) If annual funding for the program is reduced after the start of a fiscal year, the Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

(2) If annual funding is reduced prior to the start of a fiscal year, the Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

*§22.264. Allocation [and Disbursement] of Funds - Public Technical and State Colleges.*

(a) ~~[Allocations for public technical colleges and public state colleges for Fiscal Year 2016 and Later.]~~ Allocations are to be determined on an annual basis as follows:

(1) The allocation base for each eligible institution will be the number of students it reported in the most recent certified Financial Aid Database submission who met the following criteria:

(A) were classified as Texas residents;

(B) were enrolled as undergraduates in an associate degree or certificate program half-time, three-quarter time, or full-time; and

(C) have a 9-month Expected Family Contribution, calculated using federal methodology, less than or equal to the Federal Pell Grant eligibility Expected Family Contribution cap for the year reported in the Financial Aid Database submission.

(2) Each institution's percent of the available funds will equal its percent of the state-wide need as determined by multiplying each institution's enrollments by the respective award maximums of students who meet the criteria in subsection paragraph (1) of this subsection.

(3) ~~Allocations [Beginning with allocations for Fiscal Year 2020, allocations]~~ for both years of the state appropriations' biennium will be completed at the same time. The three most recent certified Financial Aid Database submissions will be utilized to forecast the data utilized in the calculation of the allocation for the second year of the biennium. Institutions will receive notification of their allocations for both years of the biennium at the same time.

(4) Verification of Data. Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting, and the institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the data they submitted or to advise Board staff of any inaccuracies.

~~[(b) Disbursement of Funds to Institutions. As requested by institutions throughout the academic year, the Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students. Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Board for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.]~~

~~(b) [(e)] Reductions in Funding.~~



(1) If annual funding for the program is reduced after the start of a fiscal year, the Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

(2) If annual funding is reduced prior to the start of a fiscal year, the Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 427-6365



## SUBCHAPTER N. TEXAS LEADERSHIP SCHOLARS PROGRAM

### 19 TAC §§22.265 - 22.277

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter N, §§22.265 - 22.277, concerning the establishment of the Texas Leadership Scholars Program, a merit-based scholarship and leadership opportunity program for high-achieving students with financial need. Specifically, this new subchapter provides information necessary for the implementation and administration of the Program.

Texas Education Code (TEC), Chapter 61, Subchapter T-3, requires the Coordinating Board to adopt rules for the administration of the program, including rules providing for the amount and permissible uses of a scholarship awarded under the program. The legislation only specified student eligibility, conditions for continued participation, and authorization for institutional agreements. The new rules provide clarity and guidance to students, participating institutions, and Coordinating Board staff for the program's implementation.

Specifically, these new sections will outline the authority and purpose, definitions, institutional eligibility requirements, student eligibility requirements, academic achievement support, leadership development opportunities, hardship provisions, scholarship amounts, allocation and disbursement of funds, which are necessary to administer the Texas Leadership Scholars Program.

Rule 22.265 indicates the specific sections of the TEC that provide the agency with authority to issue these rules, as well as the purpose of the Texas Leadership Scholars Program.

Rule 22.266 provides definitions for words and terms within Texas Leadership Scholars rules. The definitions provide clarity for words and terms that are integral to the understanding and administration of the Texas Leadership Scholars rules.

Rule 22.267 outlines the requirements institutions must fulfill to participate in the Texas Leadership Scholars program. The requirements are proposed to: (a) clarify the type of institution eligible to participate, and (b) provide rules specific to requirements the Coordinating Board is proposing to ensure effective administration of the Texas Leadership Scholars Program, such as the requirement that each participating institution enter into an agreement with the Coordinating Board. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.268 outlines the eligibility requirements students must meet to allow an institution to select a student as a scholar under the Texas Leadership Scholars Program. The requirements are proposed to: (a) gather in one place the statutory requirements for the Texas Leadership Scholars Program, including the requirements related to a student's financial need; (b) clarify aspects of the statutory requirements, including the requirements related to the student graduating with a distinguished level of achievement under the Foundation School Program, and qualified either for automatic admission, be nominated, or graduate with a Texas First Diploma; and (c) clarify aspects of the statutory requirements related to student's eligibility to continue in the program, such as making satisfactory academic progress and participation in programmatic requirements. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.269 outlines the satisfactory academic progress requirements related to a student's eligibility to continue in the program. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.270 outlines the guidelines for scholars to transfer to another eligible institution. The requirements are proposed to: (a) clarify that scholars are eligible to transfer once during the student's eligibility period; and (b) clarify that the Coordinating Board will make sure that the scholar will receive the scholarship funds during their eligibility period. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.271 outlines the process and the criteria in which institutions will select students to receive the Texas Leadership Scholars scholarship. The requirements are proposed to: (a) clarify that students will indicate interest through an application; and (b) that institutions will make selections based on a student's eligibility, evidence of leadership, service, and academic achievement. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.272 and §22.273 outline the requirements that institutions must fulfill to provide programmatic experiences for scholars in the program. The requirements are proposed to: (a) clarify the types of academic achievement and leadership development programmatic elements institutions must provide for scholars; and (b) clarify if the institution is unable to provide the listed programmatic elements, the process for approval for alternative programming. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Rule 22.274 outlines the requirements that institutions must follow to determine when scholars are no longer eligible to participate in the Texas Leadership Scholars Program. The requirements are proposed to: (a) gather in one place the statutory requirements for the Texas Leadership Scholars Program, including the requirements related to a student's enrollment and the transfer policy; and (b) clarify the aspects of the statutory requirements, such as the student being enrolled in a baccalaureate degree and receiving the scholarship for no more than four years.

Rule 22.275 outlines the criteria for an institution to allow an eligible scholar a hardship provision under the Texas Leadership Scholars Program. This section provides institutions with the provisions for hardship consideration and defines the conditions the hardship may include such as severe illness. This section outlines the process in which the institution must document the circumstances of the hardship.

Rule 22.276 outlines the scholarship amounts and how the Coordinating Board will allocate the funds to institutions. The proposed rule provides the process in which the number of initial scholarships is determined, the number of scholarships for returning scholars, and the annual allocation formula for each institution.

Rule 22.277 establishes the mechanisms by which the Coordinating Board will disburse the funds to each participating institutions to support their participation in the Texas Leadership Scholars Program, as well as the institutions' participation in the process. The proposed rule provides the frequency of disbursements to each institution and the way the institutions will have the opportunity to review the calculation for accuracy. This section is proposed based on TEC, Section 61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Scholars Program.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has determined that for each of the first five years the sections are in effect the rules do not impose additional costs of compliance beyond those provided in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Jennielle Strother has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the increase in number of high-achieving, economically disadvantaged students who pursue higher education opportunities they may not have been able to afford or access otherwise. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Participation in the Texas Leadership Scholars program is voluntary.

#### Government Growth Impact Statement

- (1) the rules will create a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [CRI@highered.texas.gov](mailto:CRI@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Section 61.897, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Texas Leadership Scholars Program.

The proposed new sections affect Texas Education Code, Sections 61.891 - 61.897.

#### §22.265. Authority and Purpose.

(a) Authority for this subchapter is provided in Texas Education Code, chapter 61, subchapter T-3, §§61.891 - 61.897, Texas Leadership Scholars Program.

(b) The purpose of this program is to provide merit scholarships coupled with academic achievement support and leadership development to assist eligible students to enroll in and graduate from public institutions of higher education in this state.

#### §22.266. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. In the event of conflict, the definitions in this subchapter shall control.

(1) Administrator--The institution of higher education contracted by the Texas Higher Education Coordinating Board to administer the Program.

(2) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(3) Commissioner--The Commissioner of Higher Education.

(4) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board and its staff.

(5) Eligible Institution--A general academic teaching institution as defined by section 61.003(3) of the Texas Education Code.

(6) Mentoring--A program in which a student is paired with or serves as a mentor.

(7) Program--The Texas Leadership Scholars Program.

(8) Scholar--An eligible student who applied and was selected to participate in the Texas Leadership Scholars Program by a participating institution.

(9) Scholarship--A scholarship awarded to a scholar under the Program.

#### §22.267. Eligible Institutions.

(a) Responsibilities. A participating eligible institution is required to:

(1) Abide by the General Provisions outlined in subchapter A of this chapter (relating to General Provisions);

(2) Create and comply with policies that prohibit discrimination against or deny participation in or the benefits of the Program described in this subchapter on the basis; of race, color, national origin, gender, religion, age, or disability;

(3) Comply with the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions or employment;

(4) Ensure each Scholar receives sufficient financial aid from federal, state, and institutional grants and scholarships other than the scholarship awarded under the program to cover full tuition and fees for 4 years at no cost to the Scholar so long as the Scholar maintains eligibility; and

(5) Provide all reports regarding the program to the Coordinating Board or Administrator.

(b) Approval.

(1) Agreement. Each eligible institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner, prior to receiving reimbursement through the program.

(2) Approval Deadline.

(A) Each eligible institution must indicate an intent to participate in the program by emailing the Administrator by June 15 and enter into an agreement with the Coordinating Board by August 31 for qualified students enrolled in that institution to be eligible to receive scholarships in the following biennium.

(B) Notwithstanding subparagraph (A), for the 2023-24 academic year, an eligible institution may indicate intent to participate in the program by the administrative deadline established by the Commissioner.

§22.268. Eligible Students.

(a) To receive an initial award through the Program, a student must:

(1) Submit an application for scholarship consideration through the Coordinating Board or Administrator;

(2) Have Texas resident status, as determined by chapter 21, subchapter B of this title (relating to Determination of Resident Status);

(3) Graduate from a Texas public high school, including an open-enrollment charter school;

(4) Be enrolled full-time in a baccalaureate degree program at a participating institution the fall semester immediately following high school graduation;

(5) Have applied for any available financial aid assistance;

(6) Be TEXAS Grant eligible, as determined by subchapter L, §22.228 of this chapter (relating to Eligible Students) and meet one of the following criteria under subparagraph (A) or (B):

(A) Graduate with a distinguished level of achievement under the foundation high school program, and:

(i) Graduate in the top 10% of the student's high school graduating class; or

(ii) Submit with the application a nomination letter from the student's high school principal or counselor; or

(B) Be eligible to graduate with a Texas First Diploma as set out in chapter 21, subchapter D of this title (relating to Texas First Early High School Completion Program).

(b) To receive a continuation award through the Program, a scholar must:

(1) Have previously received an initial year award through this Program;

(2) Be enrolled full-time in a baccalaureate degree program where the scholar received initial award or at another participating eligible institution to which the student has transferred during the period of eligibility;

(3) Make satisfactory academic progress toward the baccalaureate degree at the eligible institution, as defined in §22.269 of this subchapter (relating to Satisfactory Academic Progress) unless the scholar is granted a hardship extension in accordance with §22.273 of this subchapter (relating to Hardship Provision);

(4) Have completed or is on target to complete programmatic requirements set forth in §22.271 and §22.272 of this subchapter (relating to Scholarship Selection Criteria and Academic Achievement Support, respectively) as reported by participating institution.

§22.269. Satisfactory Academic Progress.

To qualify for a scholarship, each recipient of the scholarship shall meet the satisfactory academic progress requirements as utilized by the financial aid office of the eligible institution to determine eligibility for federal financial aid programs.

§22.270. Transfer.

A Scholar may transfer to another eligible institution not more than once during the student's period of eligibility. The Coordinating Board shall ensure that a participating eligible institution who enrolls a Scholar receives the scholarship funds for that student's remaining period of eligibility.

§22.271. Scholarship Selection Criteria.

The Coordinating Board or Administrator will receive scholarship applications and will forward qualified applications to each participating eligible institution of interest and the participating eligible institutions shall make selections based on a student's:

(1) Scholarship interest through the application;  
(2) Ranking of the participating eligible institution as a top choice;

(3) Eligibility criteria set forth in §22.268 of this subchapter (relating to Eligible Students);

(4) Evidence of leadership and service within their high school and community; and

(5) Demonstrated academic achievement and ability.

§22.272. Academic Achievement Support.

(a) Each participating eligible institution shall ensure that each Scholar's experience includes, at a minimum, the following academic programmatic elements:

(1) Program cohort learning communities;  
(2) Mentoring, research, and internship opportunities;  
(3) Networking with state government, business, and civic leaders; and  
(4) Statewide cohort learning institutes or seminars.

(b) The Coordinating Board may enter into agreements with participating eligible institutions to provide research-based support for

scholars to make satisfactory academic progress and graduate on time at participating institutions.

(c) If a participating eligible institution is unable to include a scholar or scholars in subsection (a), academic programmatic elements, they must provide alternative programming that has been approved by the Commissioner to aid the scholar in making academic progress.

§22.273. Leadership Development.

(a) Each participating eligible institution must ensure that a Scholar's experience includes, at a minimum, the following cohort-based leadership development elements:

(1) Leadership development programming; and

(2) Scholar summer programming which may be met through participating in a leadership conference, study abroad, or internship opportunities.

(b) The Coordinating Board may enter into agreements with participating eligible institutions to provide leadership development opportunities for scholars.

(c) If a participating eligible institution is unable to include a scholar or scholars in subsection (a), leadership development requirements, they must provide alternative programming that has been approved by the Commissioner to meet similar outcomes.

§22.274. Discontinuation of Eligibility or Non-Eligibility.

(a) A student who has already earned a baccalaureate degree at any public or private post-secondary institution is ineligible to participate in the program.

(b) Unless granted a hardship postponement in accordance with §22.275 of this subchapter (relating to Hardship Provisions), a student's eligibility for a grant ends:

(1) Five years from the start of the semester in which the student enrolls in the baccalaureate degree program at the eligible institution;

(2) Once the student has earned a cumulative total of 150 credit hours, including transferred hours, as verified by the student's institution; or

(3) If a Scholar transfers to another institution, except as authorized under §22.270 of this subchapter (relating to Transfer).

(c) Except as provided in §22.275 of this subchapter, a student may not receive a scholarship more than four years from the start of the semester in which the student enrolls in the baccalaureate degree program at the participating eligible institution.

§22.275. Hardship Provisions.

(a) In the event of a hardship or for other good cause as determined by the eligible institution, the Program Officer at the institution may allow an otherwise eligible Scholar to receive a scholarship:

(1) While enrolled in fewer semester credit hours than required in §22.268 of this subchapter (relating to Eligible Students);

(2) If the Scholar fails to meet the satisfactory academic progress requirements of §22.268 of this subchapter; or

(3) If the scholar requires an extension of the limits found in §22.274(b) of this subchapter (relating to Discontinuation of Eligibility or Non-Eligibility) to complete his or her degree.

(b) Hardship conditions may include:

(1) Documentation of a serious health/condition that makes the Scholar unable to attend school or complete academic study;

(2) Documentation that the Scholar is responsible for the care of a child, spouse, or parent who has a serious health condition, sick, injured, or and that the scholar's provision of care may affect his or her academic performance;

(3) The birth of a child or placement of a child with the student for adoption or foster care; or

(4) Scholar needing fewer than twelve semester credit hours to complete Scholar's degree plan.

(c) A hardship under this section may extend for a period of no longer than one year.

(d) Documentation of the hardship circumstances approved for a Scholar to receive a scholarship must be kept in the Scholar's files, and the institution must identify Scholars approved for a scholarship based on a hardship to the Coordinating Board, so that it may appropriately monitor each Scholar's period of eligibility.

(e) Eligible institutions shall adopt a hardship policy under this section, share such policy with Scholars and have the policy available in the financial aid office for public review upon request.

§22.276. Scholarship Amounts and Allocation of Funds.

(a) Funding. The Coordinating Board may not award through this program an amount that exceeds the amount of state appropriations and other funds that are available for this use.

(b) Scholarship Amounts.

(1) The amount of the scholarship in an academic year shall be the average cost of housing and food at the participating institution as approved by the Coordinating Board; and

(2) An institution may not reduce the amount of a scholarship by any gift aid for which the Scholar receiving the scholarship is eligible unless the total amount of a Scholar's scholarship plus any gift aid received exceeds the Scholar's cost of attendance.

(c) Allocation of Funds.

(1) The Commissioner shall determine and announce the number of initial scholarships available to each participating institution by January 31 of the prior fiscal year set forth in §22.268(a) of this subchapter (relating to Eligible Students);

(2) The number of scholarships for returning scholars will be the number of scholars eligible to receive the scholarship set forth in §22.268(b) of this subchapter; and

(3) Each participating eligible institution will receive an annual allocation equal to the number of scholarships times the average housing and food approved by the Commissioner. This amount shall include the amount necessary to cover the scholarships of a Scholar who transferred to the institution as authorized under this subchapter.

§22.277. Disbursement of Funds.

Upon request by an institution throughout the academic year, the Coordinating Board shall forward to each participating eligible institution a portion of its allocation of funds for timely disbursement to Scholars. Each participating eligible institution shall have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, an institution may lose any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to Scholars. Funds released in this manner are deemed returned to the Coordinating Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 29, 2023.

TRD-202303644

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 427-6365



## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 74. CURRICULUM REQUIREMENTS

#### SUBCHAPTER C. OTHER PROVISIONS

##### 19 TAC §74.27

The State Board of Education (SBOE) proposes an amendment to §74.27, concerning innovative courses and programs. The proposed amendment would update innovative course application and approval requirements.

**BACKGROUND INFORMATION AND JUSTIFICATION:** After the SBOE adopted new rules concerning graduation requirements, the previously approved experimental courses were phased out as of August 31, 1998. Following the adoption of the Texas Essential Knowledge and Skills (TEKS), school districts now submit requests for innovative course approval for courses that do not have TEKS. The process currently outlined in §74.27 provides authority for the commissioner of education to approve discipline-based courses but reserves for SBOE review and approval those courses that do not fall within any of the subject areas of the foundation or enrichment curriculum.

Each year, the Texas Education Agency (TEA) provides the opportunity for school districts and other entities to submit applications for proposed innovative courses. The board last amended §74.27 in November 2022 to require that an applicant for an innovative course pilot the proposed course in a Texas school prior to seeking approval from the SBOE. At the April 2023 SBOE meeting, TEA staff provided an overview of the innovative course approval process, including key data related to historical implementation of innovative courses. At the June 2023 meeting, the SBOE Committee on Instruction discussed possible amendments to §74.27.

The proposed amendment to §74.27 would shift from the commissioner to the SBOE the authority to approve innovative courses that fall under the foundation or enrichment curriculum, specify the number of years for initial approval and renewal of innovative courses, and exempt career and technical education courses that support an approved program of study from the pilot requirement. It would also require TEA to conduct a periodic review of all approved innovative courses and identify courses for possible sunset in accordance with specific criteria.

The SBOE approved the proposed amendment for first reading and filing authorization at its September 1, 2023, meeting.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by modifying the requirements for state approval of innovative courses and shifting from the commissioner to the SBOE the authority to approve innovative courses that fall under the foundation or enrichment curriculum.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing districts and entities that submit applications for innovative courses clearer guidance regarding expectations for innovative courses. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no new data or reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins October 13, 2023, and ends at 5:00 p.m. on November 13, 2023. A form for submitting public comments is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules>. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in November 2023 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 13, 2023.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.002(f), which authorizes local school districts to offer courses in addition to those in the required curriculum for local credit and requires the State Board of Education to be flexible in approving a course for credit for high school graduation.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.002(f).

§74.27. *Innovative Courses and Programs.*

(a) A school district may offer innovative courses to enable students to master knowledge, skills, and competencies not included in the essential knowledge and skills of the required curriculum.

(1) The State Board of Education (SBOE) may approve any course that does not fall within any of the subject areas listed in the foundation and enrichment curricula when the applying school district or organization demonstrates that the proposed course is academically rigorous and addresses documented student needs.

~~[(2) The commissioner of education may approve a discipline-based course in the foundation or enrichment curriculum when the applying school district or organization demonstrates that the proposed course is academically challenging and addresses documented student needs.]~~

(2) ~~[(3)]~~ Applications shall not be approved if the proposed course significantly duplicates the content of a Texas Essential Knowledge and Skills (TEKS)-based course or can reasonably be taught within an existing TEKS-based course.

(3) ~~[(4)]~~ To request approval from the SBOE or the commissioner, the applying school district or organization must submit a request for approval at least six months before planned implementation that includes:

- (A) a description of the course and its essential knowledge and skills;
- (B) the rationale and justification for the request in terms of student need;
- (C) data that demonstrates successful piloting of the course in Texas;
- (D) a description of activities, major resources, and materials to be used;
- (E) the methods of evaluating student outcomes;
- (F) the qualifications of the teacher;
- (G) any training required in order to teach the course and any associated costs; and
- (H) the amount of credit requested.

(4) ~~[(5)]~~ To request approval from the commissioner for a career and technical education innovative course, the applying school district or organization must submit with its request for approval evidence that the course is aligned with state and/or regional labor market data.

(5) ~~[(6)]~~ To request approval of a new innovative course, the applying school district or organization must submit with its request for approval evidence that the course has been successfully piloted in its entirety in at least one school in the state of Texas.

(6) The requirements of paragraphs (3)(C) and (5) of this subsection do not apply to the consideration of a course developed to support a program of study in career and technical education.

(7) Newly approved innovative courses shall be approved for a period of three years, and courses approved for renewal shall be approved for a period of five years.

(8) [(7)] With the approval of the local board of trustees, a school district may offer, without changes or deletions to content [modifications], any state-approved innovative course.

(9) Texas Education Agency shall review all approved innovative courses once every two years and provide for consideration for sunset a list of innovative courses that meet the following criteria:

- (A) approved as an innovative course for at least three years;
- (B) two consecutive years of zero enrollment;
- (C) average enrollment of less than 100 students statewide;
- (D) available at an average of fewer than 20 districts or charter schools statewide;
- (E) duplicative of another innovative or TEKS-based course; or
- (F) approved for implementation as a TEKS-based course.

(b) An ethnic studies course that has been approved by the SBOE ~~[commissioner]~~ as an innovative course shall be considered by ~~[presented to]~~ the SBOE at a subsequent meeting ~~[for discussion and consideration]~~ for inclusion in the TEKS.

(1) Only comprehensive ethnic studies courses in Native American studies, Latino studies, African American studies, and/or Asian Pacific Islander studies, inclusive of history, government, economics, civic engagement, culture, and science and technology, shall be considered by [presented to] the SBOE [for consideration].

(2) The chair of the Committee on Instruction, in accordance with SBOE Operating Rule 2.5(b), shall collaborate with the board chair to place the item on the next available Committee on Instruction agenda following SBOE [commissioner] approval of the innovative course.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2023.

TRD-202303535  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency

Earliest possible date of adoption: November 12, 2023  
For further information, please call: (512) 475-1497



CHAPTER 102. EDUCATIONAL PROGRAMS  
SUBCHAPTER KK. COMMISSIONER'S  
RULES CONCERNING COMPLIANCE  
INVESTIGATIONS IN CONNECTION WITH  
STATE-FUNDED EDUCATION PROGRAM  
GRANTS

## 19 TAC §102.1401

The Texas Education Agency (TEA) proposes an amendment to §102.1401, concerning compliance investigations in connection with state-funded education program grants. The proposed amendment would update the term "special accreditation investigation" to "special investigation" to align with statute.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 102.1401 outlines the framework for compliance investigations, corrective actions, and sanctions TEA may initiate for recipients of state education program grant funds to ensure taxpayer dollars are being spent appropriately and prevent fraud, waste, and abuse. The rule requires cooperation by state grant recipients, including the submission of required documentation and information, with ongoing compliance investigations. It also indirectly requires, via compliance investigations, that school districts and charter schools maintain documentation of compliance with existing state grant requirements as prescribed by TEA through requests for application for state grants.

The proposed amendment to §102.1401(a)(1) would change the term "special accreditation investigation" to "special investigation" to align with terminology used in Texas Education Code, §39.003 and §39.004.

**FISCAL IMPACT:** Ashley Jernigan, associate commissioner for compliance and investigations, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Jernigan has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing

the proposal would be the alignment of terminology with statute. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins October 13, 2023, and ends November 13, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 13, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.028(a)(2), which authorizes Texas Education Agency to monitor compliance with state grant requirements; and TEC, §39.056(a), which authorizes the commissioner to direct the agency to conduct monitoring reviews and random on-site visits of a school district or charter school as authorized by TEC, §7.028.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §7.028 and §39.056.

*§102.1401. Compliance Investigations.*

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Compliance investigation**--An investigation by the Texas Education Agency (TEA) of a state education grant recipient to determine compliance with the statutory or rule requirements of a state education program. A compliance investigation is not a special [accreditation] investigation subject to the provisions of Texas Education Code (TEC), §39.003 and §39.004.

(2) **Corrective action**--An action required by the TEA, after issuance of a final compliance investigation report, of a state education grant recipient to remove an Out-of-Compliance Status, which may include, but is not limited to, the following:

(A) refunding of a portion of grant funds by the state education grant recipient to the TEA in an amount determined by the TEA to the extent the state education grant recipient failed to meet the requirements of a state education grant provision; and

(B) addressing the state education grant recipient's failure to meet the requirements of a state education grant provision.

(3) **Out-of-Compliance Status**--A status determined by the TEA in a final compliance investigation as described in subsection (g) of this section that a state education grant recipient has not met the requirements of an applicable state education grant provision or as provided in subsection (e) of this section.

(4) **State education grant**--A grant of funds authorized by the State of Texas to implement a state education program.

(5) **State education grant recipient**--An entity that receives state education grant funds to implement a state education program.

(6) State education program--A program authorized and funded by the State of Texas to facilitate the education of children.

(b) The TEA may initiate a compliance investigation at its discretion or upon receipt of a complaint from a person or entity other than the TEA.

(c) The TEA may undertake a compliance investigation on site, as a desk review, or as a combination of both.

(d) The TEA shall provide written notice to a state education grant recipient of an impending compliance investigation.

(e) The refusal of a state education grant recipient to cooperate with a compliance investigation may result in the assignment of an Out-of-Compliance Status by the TEA to the state education grant recipient. An Out-of-Compliance Status assigned due to lack of cooperation with a compliance investigation may be removed at the TEA's discretion upon its determination that a state education grant recipient has provided the information the TEA requested.

(f) Pursuant to §157.1121(6) of this title (relating to Applicability), a compliance investigation is subject to the procedures set out in Chapter 157, Subchapter EE, of this title (relating to Informal Review, Hearing Following Investigation, and Review by State Office of Administrative Hearings). A final compliance investigation report and/or corrective action is not subject to further appeal, including any appeal otherwise available under TEC, §7.057.

(g) The TEA will provide any final compliance investigation report and/or corrective action plan to the superintendent/chief executive officer and the governing board of the state education grant recipient that is the subject of such final compliance investigation report, along with any recommendations of the TEA regarding any necessary improvements or sources of aid.

(h) Upon receipt of additional information from the state education grant recipient regarding completion of its corrective action plan, the TEA will review the information. If the information demonstrates completion or substantial completion of the corrective action plan, the TEA will remove the Out-of-Compliance Status and notify the state education grant recipient of the removal of the Out-of-Compliance Status.

(i) An Out-of-Compliance Status may bar the receipt of future discretionary state education grant funds and may disqualify future discretionary state education grant applications.

(j) The commissioner may, at the commissioner's discretion, waive the effects of an Out-of-Compliance Status.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 26, 2023.

TRD-202303541

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 475-1497



## CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER

## DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) proposes new §§127.19 - 127.22, 127.275 - 127.278, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The proposed new sections would update the TEKS to ensure the content of the courses remains current and add TEKS for two new courses in entrepreneurship to support relevant and meaningful programs of study.

**BACKGROUND INFORMATION AND JUSTIFICATION:** In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the November 2022 meeting, the SBOE approved a timeline for the review of CTE courses for 2022-2025. Also at the meeting, the SBOE approved a specific process to be used in the review and revision of the CTE TEKS. The CTE-specific process largely follows the process for TEKS review for other subject areas but was adjusted to account for differences specific to CTE. The 2022-2025 CTE cycle identifies two reviews, beginning with the winter 2023 review of a small group of courses in career preparation and entrepreneurship. An abbreviated version of the new CTE TEKS review process was used for the winter 2023 review. The second review in the 2022-2025 CTE TEKS review cycle began in summer 2023. The complete CTE TEKS review process is being used for the summer 2023 CTE TEKS review.

Applications to serve on the winter 2023 CTE TEKS review work groups were collected by the Texas Education Agency (TEA) from November 2022 through January 2023. TEA staff provided SBOE members with batches of applications for approval to serve on a CTE work group in November 2022 and in January 2023. Work groups were convened to develop recommendations for the CTE courses in February, March, April, and July 2023.

The proposed new CTE TEKS would ensure the standards for the career preparation and entrepreneurship courses included in the winter 2023 CTE TEKS review are up to date.

The SBOE approved the proposed new sections for first reading and filing authorization at its September 1, 2023 meeting.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect (2023-2027), there are fiscal implications to the state. For fiscal year 2023, the estimated cost to TEA to reimburse committee members for travel to review and revise the CTE TEKS is \$100,000. There will be implications for TEA if the state develops professional development to help teachers and administrators understand the revised TEKS.

There may be fiscal implications for school districts and charter schools to implement the proposed new TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.



**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations by proposing new CTE TEKS required to be taught by school districts and charter schools offering the courses.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be better alignment of the TEKS and additional course options for students to support relevant and meaningful programs of study. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data or reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins October 13, 2023, and ends at 5:00 p.m. on November 13, 2023. A form for submitting public comments is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules>. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in November 2023 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 13, 2023.

## SUBCHAPTER B. HIGH SCHOOL

### 19 TAC §§127.19 - 127.22

**STATUTORY AUTHORITY.** The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and

graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code, §§7.102(c)(4), 28.002(a) and (c), and 28.025(a).

§127.19. Career and Technical Education Project-Based Capstone (One Credit), Adopted 2023.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Students shall be awarded one credit for successful completion of this course. Students may repeat this course with different course content for up to three credits.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) In Career and Technical Education Project-Based Capstone, students independently or collaboratively investigate real-world problems, issues, or interests. This course applies to a variety of career and technical education career clusters and programs of study.

(3) Career and Technical Education Project-Based Capstone is a course designed for students to develop and enhance essential skills while investigating real-world problems, issues, or interests. Students work independently or collaboratively with others within or across career clusters or programs of study. Students partner with mentor(s) or advisor(s) to develop a project. Students conduct research, compile findings, implement project activities appropriate to student contribution, and present their work to a relevant audience that may include industry experts. To attain academic success, students must have opportunities to learn, reinforce, apply, and transfer their knowledge and skills in a variety of settings to become productive and contributing members of society.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student investigates independently or collaboratively a problem, issue, or interest within a selected profession or across disciplines to develop an independent or a collaborative project. The student is expected to:

(A) research and select a problem, issue, or interest within a selected profession or across disciplines for a personal enrichment or career development project;

(B) develop a problem statement, thesis statement, research question, or value proposition statement;

(C) identify and select a design or research process such as engineering design process, design thinking model, scientific discovery, or other industry-standard methodology;

(D) identify and select an appropriate audience for a problem, issue, or interest;

(E) identify key factors such as cost, feasibility, or time constraints necessary for successful development and implementation of a solution or plan; and

(F) identify key resources such as financial, intellectual, physical, human, and digital resources needed for development and implementation of a plan.

(2) The student identifies and develops key partnerships related to a problem, issue, or interest under the supervision of one or more mentors or advisors. The student is expected to:

(A) identify key stakeholders;

(B) research and select appropriate mentor(s) or advisor(s); and

(C) recruit appropriate collaborators, partners, or contributors.

(3) The student determines timeline goals for project completion and appropriate benchmarks to measure progress and success of a project. The student is expected to:

(A) identify and use effective communication strategies to use with mentor(s) or advisor(s) to provide updates and status reports;

(B) research and identify key performance indicators (KPI) that demonstrate successful progress of a project; and

(C) select appropriate method(s) to benchmark measurement of KPI such as a Gantt chart.

(4) The student develops a project management timeline for deliverables. The student is expected to:

(A) define the key activities necessary for successful implementation of a project;

(B) identify deliverable dates for key activities to support completion of a project within an established timeline; and

(C) develop and execute a plan to monitor and complete key deliverables.

(5) The student creates a risk analysis for a project. The student is expected to:

(A) identify potential risks such as financial, economic, regulatory, ethical, environmental, or legal risks associated with the design and implementation of the project and the end product; and

(B) evaluate and select methods to mitigate potential risks associated with a project.

(6) The student identifies necessary approvals required for a project. The student is expected to:

(A) research and identify approval processes necessary to implement a project;

(B) prepare and present a proposal for project approval; and

(C) review feedback and revise an original proposal for a project as needed.

(7) The student implements a project that meets standards recognized within a selected profession or across disciplines. The student is expected to:

(A) complete a project plan that includes problem statement, thesis statement, research question, or value proposition statement; key partners; measurables; deliverables; risk analyses; and approvals;

(B) implement a plan for project completion;

(C) monitor and evaluate the progress of a project plan to determine whether modifications or changes are necessary;

(D) document all phases of a project plan; and

(E) report periodically on the progress of a project plan.

(8) The student demonstrates an understanding of a selected problem, issue, or interest by explaining or justifying findings to an appropriate audience for public comment or professional response. The student is expected to:

(A) identify an appropriate audience and coordinate the presentation of findings related to a selected problem, issue, or interest;

(B) present findings in a professional manner such as using concise language, engaging content, relevant media, and clear speech;

(C) evaluate feedback received from a presentation;

(D) evaluate the project's potential impact(s) on the identified problem, issue, or interest; and

(E) analyze and report on personal learning experiences such as essential skills gained, areas of personal growth, and challenges encountered throughout the project.

§127.20. Career Preparation I (Two Credits), Adopted 2023.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Recommended prerequisite: at least one Level 2 or higher career and technical education course. Students shall be awarded two credits for successful completion of this course. For this course to satisfy a Level IV requirement as part of a student's program of study, the employment experience must be related to the student's program of study.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) Career planning is a critical step and is essential to success. Applying to multiple career and technical education clusters, the career preparation courses provide students with a framework for current employment and future career opportunities to become productive and contributing members of society.

(3) Career Preparation I provides opportunities for students to participate in a work-based learning environment that incorporates continuous collaborative feedback between the employer, teacher, and student. This course combines classroom instruction with business and industry employment experiences that may be outside the student's cur-

rent program of study. The goal is for students to obtain entry-level employment developing a variety of skills for obtaining and maintaining employment. Career preparation is relevant and rigorous, supports student attainment of academic standards, and effectively prepares students for college and career success.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional employability skills to gain an entry-level position. The student is expected to:

(A) identify different methods to gain employment such as employer websites, job search engines, business locations, networking, and local open forums for job opportunities;

(B) identify and demonstrate essential workplace skills such as eye contact, professional greetings, punctuality, appropriate dress, and effective communication to gain employment;

(C) develop a cover letter and create a resume, curriculum vitae (CV), or portfolio;

(D) demonstrate proper interview techniques in a variety of situations;

(E) create pre-employment documents, including thank you letters, and post-employment documents, including a resignation letter with customary notice provisions; and

(F) complete appropriate employment documents, including application, offer letter, I-9 form, and W-4 form.

(2) The student develops essential skills necessary for success in the workplace. The student is expected to:

(A) identify and model appropriate hygiene, grooming, and attire for various workplaces;

(B) demonstrate professionalism by being dependable, solving problems, taking initiative, communicating effectively, listening actively, and resolving conflicts;

(C) model appropriate workplace etiquette in physical and digital environments;

(D) demonstrate accountability by working with other employees to support the organization, completing assigned tasks and taking responsibility for mistakes; and

(E) demonstrate time management, including prioritizing work to fulfill responsibilities and meeting deadlines.

(3) The student applies academic skills to the workplace. The student is expected to:

(A) apply appropriate industry-specific mathematical skills;

(B) develop and analyze a personal budget for a variety of economic situations such as part-time and full-time employment;

(C) interpret data from industry-specific tables, charts, and graphs to find solutions to problems;

(D) organize, write, and curate industry-specific documents and electronic communication using appropriate language; and

(E) interpret and calculate information included in an earnings statement, including wages, deductions, taxes, and other benefits such as tips earned.

(4) The student exemplifies appropriate interpersonal skills in the workplace. The student is expected to:

(A) explain how interpersonal skills affect human relations on the job;

(B) differentiate between characteristics of successful and non-successful working relationships;

(C) explain the importance of respecting the rights of others;

(D) explain how different personalities, experiences, and workstyles of employees can affect the workplace; and

(E) demonstrate professional verbal and nonverbal communication, including proper phone usage, body language, and interactions with customers and coworkers in person and online.

(5) The student applies ethical codes of conduct and legal responsibilities within school and the workplace. The student is expected to:

(A) research and explain workplace policies and procedures related to absence reporting, employee theft, sexual harassment, recognized holidays, workplace safety, acceptable use policy, jury duty, attendance and punctuality, drug-free workplace, and related consequences;

(B) demonstrate responsible behavior by following applicable workplace and school codes of conduct with integrity;

(C) discuss the importance of ethical behavior in the workplace such as treating others with respect, being honest, working to full potential, and developing a quality work product;

(D) summarize the importance of the Fair Labor Standards Act;

(E) describe the potential consequences of violating privacy laws related to Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), and Children's Online Privacy Protection Rule (COPPA);

(F) research and explain the origins and legislative intent of the Civil Rights Act of 1964, Title VII, and the Education Amendments of 1972, Title IX, and the rights and responsibilities established by these laws; and

(G) research and describe laws and regulations related to a student's employment or a chosen industry or career.

(6) The student applies concepts and skills related to safety in the workplace. The student is expected to:

(A) identify and demonstrate safe working practices in the workplace;

(B) identify and illustrate solutions related to unsafe work practices;

(C) explain the importance of Occupational Safety and Health Administration regulations in the workplace; and

(D) describe physical health and mental wellness practices that influence job performance.

(7) The student evaluates personal attitudes, work habits, and skills that support job retention and advancement. The student is expected to:

(A) identify and develop effective leadership skills through participation in activities such as career and technical student organizations;

(B) identify appropriate certifications in the current employment position or desired occupational area;

(C) compare rewards and demands associated with various levels of employment in a variety of careers;

(D) investigate and compare career options by completing interest surveys, career aptitude tests, and skill inventories;

(E) generate short- and long-term Specific, Measurable, Attainable, Realistic, Time-Bound (SMART) goals for personal and career growth;

(F) research and explain methods for developing a growth mindset;

(G) summarize how to appropriately self-advocate in the workplace; and

(H) explain the impact of employee self-evaluations, management performance evaluations, and employee feedback responses on personal job growth.

(8) The student identifies skills and attributes necessary for professional success. The student is expected to:

(A) evaluate and compare career options, including salaries and benefits;

(B) describe how interests, abilities, personal priorities, and family responsibilities affect career choices;

(C) identify continuing education opportunities that enhance career advancement and promote lifelong learning;

(D) analyze the future employment outlook in an occupational area of interest;

(E) describe entrepreneurial opportunities in an occupational area of interest; and

(F) evaluate strategies for career retention and advancement in response to the changing global workforce.

§127.21. Career Preparation II (Two Credits), Adopted 2023.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(b) General requirements. This course is recommended for students in Grade 12. Prerequisite: Career Preparation I. Students shall be awarded two credits for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) Career planning is a critical step and is essential to success. Applying to multiple career and technical education clusters, the career preparation courses provide students with a framework for current employment and future career opportunities to become productive and contributing members of society.

(3) Career Preparation II provides additional opportunities for students to develop business and industry employment experiences that may be outside the student's current program of study alongside

advanced classroom instruction. The goal is to prepare students with a variety of skills to transition from job- to career-mindedness. This course provides a continuing focus on collaborative feedback between the employer, teacher, and student. Career Preparation II expands on Career Preparation I by increasing rigor, supporting student attainment of academic standards, and effectively preparing students for college and career success.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student applies and evaluates employability skills to improve the student's marketability within the workplace. The student is expected to:

(A) differentiate between a job and a career;

(B) refine an industry-specific professional portfolio or resume;

(C) identify appropriate sources for writing and obtain letters of recommendation;

(D) model proper interview skills based on a chosen career cluster; and

(E) evaluate the effectiveness of various methods to gain employment.

(2) The student demonstrates essential skills necessary for success in the workplace. The student is expected to:

(A) maintain appropriate hygiene, grooming, and attire for the workplace;

(B) model appropriate workplace etiquette in physical and digital environments;

(C) justify time-management decisions to fulfill responsibilities and meet deadlines;

(D) analyze employer expectations by reflecting on evaluations;

(E) demonstrate effective listening skills used in the workplace through appropriate interactions with customers and coworkers; and

(F) cultivate and improve professionalism by continuously being dependable, solving problems, taking initiative, communicating effectively, and listening actively.

(3) The student applies and enhances academic knowledge and skills in the workplace. The student is expected to:

(A) integrate mathematical concepts into business transactions such as counting inventory, calculating discounts, and conducting cash transactions;

(B) compare earning potential for an occupational area of interest with personal financial goals;

(C) analyze and apply data from industry-specific tables, charts, or graphs to generate solutions to problems; and

(D) analyze and synthesize information from electronic communications, including forms, reports, or summaries.

(4) The student demonstrates leadership qualities by applying work ethic, job expectations, multicultural considerations, and communication skills in the workplace. The student is expected to:

(A) identify positive interpersonal skills, including conflict resolution, effective communication, and respect for all people, and model these skills as a mentor with peers;

(B) apply effective verbal, nonverbal, written, or electronic communication skills to a variety of audiences;

(C) define personal integrity and evaluate its effects on human relations in the workplace;

(D) classify a variety of working relationships into functional and dysfunctional characteristics; and

(E) participate in leadership and career-development activities.

(5) The student models ethical codes of conduct and legal responsibilities within school and the workplace. The student is expected to:

(A) evaluate provisions of the Fair Labor Standards Act;

(B) analyze the legal consequences of violating privacy laws related to Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), and Children's Online Privacy Protection Act (COPPA);

(C) research and describe laws governing different professions within a chosen career cluster;

(D) analyze organizational policies and procedures and ethical standards from the student's current place of employment; and

(E) interpret and evaluate the rights and responsibilities of employers and employees.

(6) The student applies concepts and skills related to safety in the workplace. The student is expected to:

(A) research and describe different types of identity theft to identify associated risks and prevention strategies;

(B) identify and evaluate consequences of breach of personal and occupational safety practices in the workplace;

(C) model safe working practices at a training station;

(D) evaluate the impact of Occupational Safety and Health Administration regulations in the workplace; and

(E) analyze how physical health and mental wellness practices influence career longevity and satisfaction within a chosen career cluster.

(7) The student models the skills that support employment retention and advancement. The student is expected to:

(A) create a personal growth plan that identifies relevant certifications, postsecondary opportunities, and technical skills required for various levels of employment based on a chosen career and describe how to obtain them;

(B) develop short- and long-term Specific, Measurable, Attainable, Realistic, Time-Bound (SMART) goals based on personal and professional growth plans;

(C) analyze the rewards and demands of career advancement;

(D) model appropriate self-advocacy in various workplace scenarios;

(E) compare current employee performance evaluations to previous evaluations to identify areas of growth and opportunities for continued development; and

(F) evaluate and compare employment advancement considerations such as salaries, benefits, and qualifications.

(8) The student analyzes postsecondary career opportunities. The student is expected to:

(A) research and compare declining and growth industries across career clusters;

(B) identify and analyze future job growth based on societal needs;

(C) analyze the skills required to be successful in emerging industries;

(D) identify continuing education opportunities to determine education and training requirements for future careers;

(E) research and evaluate entrepreneurial opportunities in an occupational area of interest; and

(F) evaluate how personal priorities such as interests, abilities, and family responsibilities may influence career choice.

§127.22. Extended Career Preparation (One Credit), Adopted 2023.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Corequisite: Career Preparation I or Career Preparation II. This course must be taken concurrently with Career Preparation I or Career Preparation II and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is demonstrating proficiency in additional and more advanced knowledge and skills.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) Career planning is a critical step and is essential to success. Applying to multiple career and technical education clusters, the career preparation courses provide students with a framework for current employment and future career opportunities to become productive and contributing members of society.

(3) Extended Career Preparation is an enhancement and extension to Career Preparation I or Career Preparation II to provide additional opportunities for students to participate in a work-based learning experience that combines classroom instruction with business and industry employment experiences that may be outside the student's current program of study. The goal is to provide students additional time for deeper exploration of skills in the workplace. Career preparation is relevant and rigorous, supports student attainment of academic standards, and effectively prepares students for college and career success.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates employability skills as required by business and industry. The student is expected to:

(A) identify and participate in training, education, or preparation for licensure, certification, or other relevant credentials to prepare for employment;

(B) complete work tasks with high standards to ensure delivery of quality products and services; and

(C) demonstrate and apply planning and time-management skills to work tasks.

(2) The student demonstrates essential skills for success in the workplace. The student is expected to:

(A) demonstrate and apply professional standards and personal qualities needed to be employable such as punctuality, initiative, and cooperation;

(B) apply appropriate content knowledge, technical concepts, and vocabulary in the workplace;

(C) apply effective listening skills to obtain and clarify information in the workplace; and

(D) maintain appropriate hygiene, grooming, and attire in the workplace.

(3) The student applies and enhances academic knowledge and skills in the workplace. The student is expected to:

(A) employ critical-thinking skills to solve problems and make decisions; and

(B) analyze elements of a problem to develop creative and innovative solutions.

(4) The student exemplifies appropriate interpersonal and communication skills in the workplace. The student is expected to:

(A) demonstrate teamwork using conflict-management skills to achieve collective goals;

(B) apply verbal and non-verbal communication skills consistently in a manner that is clear, concise, and effective; and

(C) model effective internal and external communications to support work activities.

(5) The student models ethical codes of conduct and legal responsibilities within the workplace. The student is expected to:

(A) demonstrate a positive work ethic by performing assigned tasks as directed;

(B) model ethical reasoning in workplace situations;

(C) comply with all applicable rules, laws, and regulations in the workplace; and

(D) research and explain the roles of the Equal Employment Opportunity Commission (EEOC) and the Texas Workforce Commission (TWC) in the workplace.

(6) The student applies concepts and skills related to safety in the workplace. The student is expected to:

(A) follow workplace safety rules and regulations consistently;

(B) operate tools and equipment used in the workplace safely;

(C) report and handle accidents and safety incidents according to workplace procedures as necessary; and

(D) describe and perform a hazard analysis of the workplace.

(7) The student participates in a paid or an unpaid career preparation experience. The student is expected to:

(A) conduct, document, and evaluate learning activities in a supervised employment experience;

(B) assess and report on advanced technical knowledge and skills related to the student's occupational objective and growth;

(C) evaluate strengths and weaknesses in technical skill proficiency; and

(D) document experiences related to the workplace and curate work samples.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2023.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 475-1497



## SUBCHAPTER F. BUSINESS, MARKETING, AND FINANCE

### 19 TAC §§127.275 - 127.278

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4), 28.002(a) and (c), and 28.025(a).

*§127.275. Entrepreneurship I (One Credit), Adopted 2023.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(b) General requirements. Recommended prerequisite: Principles of Business, Marketing and Finance. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Business, Marketing, and Finance Career Cluster focuses on planning, managing, organizing, directing, and evaluating business functions essential to efficient and productive business management, finance, operations, and marketing.

(3) In Entrepreneurship I, students will gain the knowledge and skills needed to become an entrepreneur in a free enterprise system. Students will learn the key concepts necessary to begin and operate a business. The primary focus of the course is to help students identify the types and selection criteria of business structures, understand the components of a business plan, determine feasibility of an idea using research, and develop and present a business concept. In addition, students will understand the basics of management, accounting, finance, marketing, risk, and product development.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations, local chamber of commerce meetings, and meetings with entrepreneurs, mentors, or industry experts.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate professional business communication skills such as verbal phone conversations and the construction of email in a professional manner, including subject line, salutation, email body, closing, and signature;

(B) model professional business norms for face-to-face and virtual interactions in alignment with business norms;

(C) identify how to conduct a meeting with professionals, including the importance of punctual attendance, wearing attire appropriate for the meeting, introducing all parties to one another, reviewing and using the meeting agenda as a guide for the meeting, taking notes during the meeting, and sending meeting outcomes to each participant after the conclusion of the meeting;

(D) communicate effectively with others using verbal and nonverbal communication, active listening, and writing skills in a business setting;

(E) demonstrate collaboration skills, including resolving conflicts, within a team setting;

(F) demonstrate a productive work ethic, including performing assigned tasks, following schedules, and meeting deadlines;

(G) evaluate the ethical course of action for entrepreneurs using applicable rules, laws, and regulations;

(H) demonstrate leadership skills by participating in career and technical student organizations, leading a team project, or facilitating a group discussion;

(I) demonstrate coachability skills by receiving and giving constructive feedback; and

(J) demonstrate critical and analytical thinking skills when comparing business decisions.

(2) The student demonstrates an understanding of entrepreneurship. The student is expected to:

(A) distinguish between the terms entrepreneurship and entrepreneur;

(B) define small-, medium-, and large-sized businesses;

(C) differentiate between the various routes to entrepreneurship, including start-ups, franchising, acquisition, mergers, and non-profit ownership;

(D) identify and discuss the risks and benefits of an entrepreneurial way of life;

(E) analyze and discuss the advantages and disadvantages of entrepreneurship;

(F) distinguish between intrapreneurship and entrepreneurship; and

(G) identify the role entrepreneurship plays in innovation within a free-market economy.

(3) The student researches corporations, franchises, partnerships, and sole proprietorships to understand business structures. The student is expected to:

(A) evaluate the advantages and disadvantages involved with the ownership of each business structure, including control, tax implications, risk, and liability;

(B) differentiate between management structures for different types of business;

(C) investigate local businesses and classify them by their business structures; and

(D) identify the primary importance of shareholders.

(4) The student engages in discovery activities related to entrepreneurship. The student is expected to:

(A) complete a career interest inventory or career aptitude test and a personality assessment to identify personality traits, strengths, and weaknesses;

(B) identify characteristics of successful entrepreneurs; and

(C) identify opportunities for personal growth through self-reflection activities.

(5) The student identifies problems and creates solutions to address market wants and needs. The student is expected to:

(A) identify and analyze problems in the marketplace through an ideation process; and

(B) describe possible solutions for the marketplace problems identified.

(6) The student understands the key components included in a business plan. The student is expected to:

(A) define and explain basic accounting terms, including revenue; expenses; cash; accounts receivable; accounts payable; fixed assets; liquid assets; inventory; liabilities; cost of goods sold; earnings before interest, taxes, depreciation, and amortization

(EBITDA); gross profit; net profit; forecasts; cash flow; return on investment; and owners' equity;

(B) identify possible diversified revenue streams for a business;

(C) define and explain variable, fixed, and mixed costs;

(D) identify the components of key financial statements of a business plan, including balance sheet, profit and loss statement, and cash flow statement;

(E) calculate unit economics and a break-even point using sample data;

(F) define and explain different channels of distribution;

(G) define and explain demographics, psychographics, and geographics as related to potential customer segment;

(H) provide examples of market segments;

(I) compare various pricing strategies such as cost-plus pricing, price skimming, penetration pricing, premium pricing, and value-based pricing;

(J) define and explain a competitive analysis;

(K) analyze and explain different types of marketing and sales strategies, including digital and social media marketing;

(L) identify and define key performance metrics; and

(M) describe the unique value proposition of a product or service that provides a competitive edge against existing competitors.

(7) The student demonstrates an understanding of a business planning methodology. The student is expected to:

(A) identify the components of a business planning tool, including the Business Model Canvas; and

(B) apply a business planning template to an existing business.

(8) The student creates a plan for a preliminary business concept. The student is expected to:

(A) identify a current market need or problem;

(B) identify a product or service to address the market need or problem;

(C) explain the unique value proposition of the product or service;

(D) explain potential impacts of the availability of the product or service on a selected target market; and

(E) summarize the feasibility and key elements of the business venture.

(9) The student develops and delivers a comprehensive presentation on a preliminary business concept. The student is expected to:

(A) identify and explain the components of a pitch;

(B) create a pitch for a preliminary business concept;

(C) align presentation strategies to the intended audience and purpose;

(D) select and implement effective multimedia strategies for a presentation;

(E) provide and receive constructive feedback following a presentation; and

(F) demonstrate effective presentation skills.

(10) The student knows how to access and use organizations and resources to support entrepreneurs. The student is expected to:

(A) identify and compare the opportunities of various local, state, and national organizations and associations that provide resources to entrepreneurs, including startup grants and loans; and

(B) analyze the benefits of the various services provided by the Small Business Administration, Small Business Development Centers, Service Corps of Retired Executives (SCORE), chambers of commerce, institutions of higher education, and industry-related associations.

§127.276. Entrepreneurship II (One Credit), Adopted 2023.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: Entrepreneurship I. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Business, Marketing, and Finance Career Cluster focuses on planning, managing, organizing, directing, and evaluating business functions essential to efficient and productive business management, finance, operations, and marketing.

(3) In Entrepreneurship II, students gain the knowledge and skills needed to become successful entrepreneurs within an innovative marketplace in a free enterprise system. The goal and outcome of the course are for students to have a business launched by the end of the course or have the tools necessary to launch and operate a business. In this course, students learn and initiate the process of taking a business plan from idea to implementation. Students are encouraged to work in close cooperation with local industry leaders and community members to develop ideas and objectives, complete a business planning tool, pitch for funding, and register with governmental agencies.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations, local chamber of commerce meetings, and meetings with entrepreneurs, mentors, or industry experts.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate professional business skills through written and oral communication;

(B) demonstrate a productive work ethic by using a personal calendar and task list;



(C) conduct meetings in face-to-face and virtual settings by creating an agenda, confirming the meeting, using an agenda as a guide for the meeting, and sending meeting follow-up correspondence;

(D) demonstrate collaboration skills within a diverse team setting;

(E) identify an ethical course of action in a business setting;

(F) demonstrate leadership skills by participating in career and technical student organizations, leading a team project, or facilitating a group discussion;

(G) demonstrate coachability skills by using feedback to inform decision making;

(H) set short- and long-term goals;

(I) identify appropriate business attire in various work settings; and

(J) demonstrate critical and analytical thinking skills when comparing business decisions.

(2) The student demonstrates an understanding of the entrepreneurial environment. The student is expected to:

(A) compare the advantages and disadvantages of corporations, franchises, partnerships, limited-liability companies, and sole-proprietorships;

(B) evaluate the factors involved with starting, acquiring, or expanding a business;

(C) describe franchise opportunities and ownership requirements;

(D) define scaling as it applies to growing a business; and

(E) self-reflect and evaluate personal strengths for becoming a successful entrepreneur.

(3) The student engages in the ideation process and determines the feasibility of an entrepreneurial venture. The student is expected to:

(A) identify and analyze problems in the marketplace through an ideation process;

(B) analyze market research to identify possible solutions to a problem;

(C) identify the customer segment affected by a problem;

(D) evaluate the feasibility of possible solutions to a problem, including a competitive analysis such as a strength, weakness, opportunities, and threats (SWOT) analysis; and

(E) select and present the most viable solution to a problem based on market research, feasibility, and customer segmentation.

(4) The student creates a minimum viable product (MVP) for a start-up business. The student is expected to:

(A) define minimum viable product and unique value proposition for a good or service;

(B) create a minimum viable product to a solution generated from an ideation process;

(C) identify unique value proposition(s) of a minimum viable product;

(D) present the minimum viable product, including the unique value proposition(s), for feedback; and

(E) conduct market testing of the minimum viable product.

(5) The student understands how to select a funding source for a start-up business. The student is expected to:

(A) compare the advantages and disadvantages of potential funding sources, including crowdsourcing, private equity firms, venture capitalists, banks and other lenders, friends and relatives, grants, state and local development agencies, and angel investors;

(B) identify predatory lending schemes and practices; and

(C) evaluate risks and benefits of various funding sources from short- and long-term perspectives.

(6) The student determines an ownership structure for a start-up business. The student is expected to:

(A) compare ownership structures for a start-up business;

(B) select an ownership structure and explain why it is appropriate for a start-up business; and

(C) explain the process for legally registering and obtaining a tax status for a start-up business for a selected ownership structure.

(7) The student uses a business planning tool to develop a start-up business concept. The student is expected to:

(A) research business plan outlines, resources, and templates such as Business Model Canvas, lean business model template, or a traditional business plan template;

(B) select an appropriate business planning tool for a start-up business;

(C) complete the components of a selected business planning tool for a start-up business concept; and

(D) present a start-up business concept for feedback.

(8) The student demonstrates an understanding of accounting and financial practices. The student is expected to:

(A) explain the importance of budgeting and cash flow, including burn rate;

(B) identify revenues and expenses for a start-up business;

(C) explain the importance of a profit and loss statement, balance sheet, and statement of cash flow;

(D) create an operational budget for a start-up business;

(E) create a monthly projected financial statement for a three-year period for a start-up business;

(F) identify accounting tools and services such as accounting and bookkeeping software, payroll services, and tax services; and

(G) select appropriate accounting tools and services for a start-up business.

(9) The student demonstrates an understanding of the legal and regulatory environment for a business. The student is expected to:

(A) differentiate ways to protect intellectual property;

(B) distinguish between the advantages and disadvantages of a patent;

(C) determine the types of licenses a start-up business might be required to obtain, including a business license, employer identification number, name registry, professional license, and occupational license;

(D) examine the role of government agencies that oversee business regulations and determine the regulatory implications for a start-up business;

(E) examine the role of workplace safety and health in the regulatory environment and determine its implications for a start-up business;

(F) analyze the purpose of legally binding contracts;

(G) explain the implications of tax laws on a business;

(H) describe the impact of labor laws when creating a start-up business;

(I) create a sample contract for a start-up business such as sales, employment, purchase, lease, or non-disclosure agreement; and

(J) examine implications of sexual harassment and workplace violence on a business.

(10) The student demonstrates an understanding of ethical and moral obligations in entrepreneurship as they relate to shareholders, employees, customers, and the community. The student is expected to:

(A) develop ideas to build a moral and ethical business culture;

(B) evaluate the impact of unethical and immoral practices on stakeholders;

(C) create the core values for a start-up business; and

(D) create purpose, vision, and mission statements for a start-up business.

(11) The student understands the impact of leadership, human resources, and management on a start-up business. The student is expected to:

(A) distinguish between leadership and management;

(B) explore and identify personal leadership style;

(C) develop recruitment, hiring, and retention strategies for a start-up business;

(D) examine and describe effective leadership and management strategies;

(E) create an organizational chart for a start-up business;

(F) create job descriptions for key roles in a start-up business; and

(G) explain how company culture impacts recruitment and retention.

(12) The student determines a pricing structure for a start-up business. The student is expected to:

(A) create and justify a pricing structure for a start-up business;

(B) develop and analyze pricing objectives;

(C) use sample data to calculate prices, markups, and discounts for a start-up business;

(D) calculate unit economics and a break-even point for a start-up business; and

(E) explain the role of supply and demand on pricing.

(13) The student determines effective marketing and promotional strategies for a start-up business. The student is expected to:

(A) develop promotional objectives;

(B) create a marketing plan for a start-up business that includes the use of internet, social media, and sales strategies;

(C) analyze customer buying behavior to inform promotional decision-making;

(D) create promotional materials using appropriate technology;

(E) conduct a market test to measure promotional effectiveness;

(F) explain the role of search engine optimization as a marketing strategy;

(G) select an appropriate point-of-sale or e-commerce payment method; and

(H) compare how promotional strategies change during the product life cycle.

(14) The student understands the role of distribution and supply chain management for a start-up business. The student is expected to:

(A) determine distribution costs associated with transportation, storage, product handling, and inventory control;

(B) explain how distribution adds value to a product or service by providing place, possession, and time utility to a consumer;

(C) select suppliers for the production of goods and services; and

(D) analyze risks and challenges with supply chain management and distribution.

(15) The student understands key metrics to measure the success of a business. The student is expected to:

(A) explain the role and importance of key metrics as a measure of success;

(B) identify and define common key metrics; and

(C) select and justify key metrics for a start-up business.

(16) The student presents a well-organized business plan. The student is expected to:

(A) create and present a comprehensive business plan that includes business description, target market, key metrics, revenue streams, pricing structure, competitive advantage, unique value proposition, distribution channels, and financial forecast;

(B) identify the purpose of and present an elevator pitch;

(C) create and deliver a presentation for start-up business funding;

(D) select and implement effective multimedia strategies for a presentation;

(E) provide and receive constructive feedback following a presentation;

(F) demonstrate effective presentation skills; and

(G) create an executive summary.

(17) The student understands the process for launching a start-up business. The student is expected to:

(A) research and identify the process for launching a start-up business in the local area;

(B) evaluate insurance costs, locations, and loan terms; and

(C) assess equipment needs and other resources needed to launch the business.

§127.277. Practicum in Entrepreneurship (Two Credits), Adopted 2023.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Recommended prerequisites: Entrepreneurship I and Entrepreneurship II or successful completion of at least two courses in a career and technical education (CTE) program of study. Students shall be awarded two credits for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) This course can serve in multiple CTE programs of study, as it focuses on planning, managing, organizing, directing, and evaluating business functions essential to efficient and productive business management, finance, operations, and marketing related to the student's industry focus.

(3) Practicum in Entrepreneurship provides students the opportunity to apply classroom learning and experiences to real-world business problems and opportunities in a free enterprise system while expanding their skill sets and professional relationships as a real or simulated business owner versus the experience one would have as an employee. Students will prepare for an entrepreneurial career in their area of interest in their career cluster and build on and apply the knowledge and skills gained from courses taken in an array of career areas. Practicum experiences occur in a paid or an unpaid arrangement and a variety of locations appropriate to the nature and level of the student's need for work-based learning experience. Students implement personal and interpersonal skills to strengthen individual performance in the workplace and in society and to make a successful transition to the workforce or postsecondary education. It is recommended that students are paired with local business owners or employers in their specific industry program of study.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations, local chamber of commerce meetings, and meetings with entrepreneurs, mentors, or industry experts.

(5) Students are encouraged to transition from the idea phase to action and implementation of a business, including validation through sales in a real or simulated scenario.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills required by business and industry. The student is expected to:

(A) participate in a paid or an unpaid laboratory or work-based application of previously studied knowledge and skills related to entrepreneurship;

(B) demonstrate professional business skills through written and oral communication;

(C) demonstrate collaboration skills through teamwork;

(D) demonstrate professionalism by behaving in a manner appropriate for the profession and workplace;

(E) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(F) comply with all applicable rules, laws, and regulations;

(G) demonstrate time-management skills by prioritizing tasks, following schedules, and accomplishing goal-relevant activities in a way that uses time wisely and optimizes efficiency and results;

(H) identify appropriate business attire for the selected workplace; and

(I) demonstrate critical and analytical thinking skills when comparing business decisions.

(2) The student analyzes major problem areas and potential problem areas for entrepreneurs while demonstrating an understanding of leverage points and constraints. The student is expected to:

(A) assess businesses that have failed, determine factors associated with business closure, and prepare and present analysis to peers;

(B) research and analyze risks faced by entrepreneurs;

(C) evaluate entrepreneurial risk versus opportunity for a given scenario;

(D) describe how entrepreneurship differs from working for an employer;

(E) analyze personal aptitude for entrepreneurship;

(F) describe how entrepreneurs must manage organizational finances;

(G) research and apply the entrepreneur's approach to risk-taking as it applies to business decision-making;

(H) explore and explain a company's competitive advantage in its field of interest; and

(I) analyze the risks and rewards of business ownership by interviewing an entrepreneur in a chosen field of interest.

(3) The student identifies the appropriate legal structure, benefits, and drawbacks for different business types. The student is expected to:

(A) describe the different basic types of business formation, including sole proprietorship, partnership, corporation, and limited liability company;

(B) compare the benefits and drawbacks for each type of business structure such as personal liability and taxes; and

(C) research an existing business and simulate liability issues associated with its type of business structure through role-play.

(4) The student determines how to obtain funding and all associated costs needed to start a particular business. The student is expected to:

(A) describe all materials, facilities, technology, inventory, and personnel that will be needed to start and sustain the business;

(B) devise a timeline of tasks that must be completed, including the associated costs;

(C) list and describe all supplies, personnel wages and salaries, inventories, insurance, utilities, repair and maintenance, and other operating costs associated with funding the business once it is operating;

(D) document and analyze the costs associated with operating the business, using cash flow and return on investment as a means of evaluation;

(E) estimate how much money will be needed on-hand to operate the business until the break-even point;

(F) seek the advice of mentors from industry to analyze and discuss actual business situations and funding options to assist the student with a business idea;

(G) create and analyze financial statements to identify ways to improve business performance in a business model of choice; and

(H) define cash burn in relationship to a business's viability.

(5) The student examines the responsibilities businesses have to employees and the community. The student is expected to:

(A) explain the benefits of a business that contributes to the economic well-being of its employees and community;

(B) research and describe the methods in which a business can ensure economic growth and provide jobs;

(C) explore and analyze the health and safety responsibilities a business has to the community and its employees; and

(D) research and identify how businesses are making investments in community infrastructure.

(6) The student analyzes for-profit and non-profit business growth and exit strategies. The student is expected to:

(A) compare business growth strategies and identify and defend the most favorable for a potential business;

(B) describe methods that a business owner can use to obtain financial support to expand a business;

(C) identify and explain various methods an entrepreneur can use to determine how much a business is worth;

(D) analyze various paths to exit a business and the impact from startup decisions; and

(E) explain the factors an entrepreneur should consider when preparing to exit a business.

(7) The student collaborates in small groups to complete a project-based research activity to develop critical thinking and creative problem solving. The student is expected to:

(A) analyze a real-world work site and research an existing issue or problem the business is experiencing;

(B) research and report how to resolve the business problem;

(C) develop a proposal for future business opportunities; and

(D) determine how to create business relationships or alliances that would be beneficial to the business.

§127.278. Extended Practicum in Entrepreneurship (One Credit), Adopted 2023.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. The practicum course is a paid or an unpaid capstone experience for students participating in a coherent sequence of career and technical education (CTE) courses in the Marketing Career Cluster. Recommended prerequisites: Entrepreneurship I and Entrepreneurship II or successful completion of at least two courses in a CTE program of study. Corequisite: Practicum in Entrepreneurship. This course must be taken concurrently with Practicum in Entrepreneurship and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) This course can serve in multiple CTE programs of study, as it focuses on planning, managing, organizing, directing, and evaluating business functions essential to efficient and productive business management, finance, operations, and marketing related to the student's industry focus.

(3) Extended Practicum in Entrepreneurship provides students the opportunity to apply classroom learning and experiences to real-world business problems and opportunities in a free enterprise system while expanding their skill sets and professional relationships as a real or simulated business owner versus the experience one would have as an employee. Students will prepare for an entrepreneurial career in their area of interest in their career cluster and build on and apply the knowledge and skills gained from courses taken in an array of career areas. Practicum experiences occur in a paid or an unpaid arrangement and a variety of locations appropriate to the nature and level of the student's need for work-based learning experience. Students implement personal and interpersonal skills to strengthen individual performance in the workplace and in society and to make a successful transition to the workforce or postsecondary education. It is recommended that students are paired with local business owners or employers in their specific industry program of study.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations, local chamber of commerce meetings, and meetings with entrepreneurs, mentors, or industry experts.

(5) Students are encouraged to transition from the idea phase to action and implementation of a business, including validation through sales in a real or simulated scenario.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) participate in a paid or an unpaid, laboratory- or work-based application of previously studied knowledge and skills related to entrepreneurship;

(B) participate in training, education, or preparation for licensure, certification, or other relevant credentials to prepare for employment;

(C) demonstrate professional standards and personal qualities needed to succeed as an entrepreneur such as self-discipline, integrity, customer service, work ethic, and adaptability with increased fluency;

(D) demonstrate use of business information management tools with increased fluency for relevant projects;

(E) employ teamwork and conflict-management skills with increased fluency to achieve collective goals; and

(F) employ planning and time-management skills and tools with increased fluency to enhance results and complete work tasks.

(2) The student applies professional communications strategies. The student is expected to:

(A) demonstrate proper use of written, verbal, and visual communication techniques with increased proficiency;

(B) apply active listening skills to obtain and clarify information;

(C) create and deliver formal and informal presentations effectively;

(D) analyze, interpret, and effectively communicate information; and

(E) exhibit positive customer/client communication skills to maintain effective internal and external business relationships.

(3) The student implements advanced problem-solving methods. The student is expected to:

(A) employ critical-thinking skills with increased fluency both independently and in groups to solve problems and make decisions;

(B) conduct technical research to gather information necessary for decision making; and

(C) analyze elements of a problem to develop creative and innovative solutions.

(4) The student understands and applies proper safety and security techniques in the workplace. The student is expected to:

(A) demonstrate understanding of and consistently follow workplace safety rules and regulations; and

(B) adhere to technology safety and cybersecurity policies such as acceptable use policy and webpage policies.

(5) The student understands the ethical and legal responsibilities in entrepreneurship. The student is expected to:

(A) apply appropriate responses to workplace situations based on personal or professional ethical responsibilities;

(B) demonstrate integrity by choosing the ethical course of action when making decisions; and

(C) comply with all applicable rules, laws, and regulations for the selected industry.

(6) The student participates in an entrepreneurial experience. The student is expected to:

(A) conduct, document, and evaluate learning activities in a supervised experience;

(B) develop advanced technical knowledge and skills related to the student's occupational objective;

(C) demonstrate use of information technology tools to manage and perform work responsibilities;

(D) create customary styles of documents such as memoranda, letters, emails, and reports, as appropriate, to an industry of choice;

(E) apply the elements and processes of entrepreneurship to grow a business idea and meet customer expectations;

(F) demonstrate growth of technical skill competencies;

(G) evaluate strengths and weaknesses in technical skill proficiency; and

(H) collect representative work samples.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2023.

TRD-202303537

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS**

#### **CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES**

##### **SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION**

###### **22 TAC §851.22**

The Texas Board of Professional Geoscientists (TBPG) proposes an amendment concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes amendments to 22 TAC §851.22, regarding Waivers and Substitutions: Policy, Procedures, and Criteria.

#### BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

TBPG recently reviewed its waiver policy and is now proposing an amendment to allow an applicant for P.G. licensure who has taken and failed a qualifying licensing examination, after 5 years of failing the examination, to request a waiver for the specific examination that the applicant failed. The proposed rule, if adopted, would eliminate an unnecessary barrier to possible licensure. Under the current rule, an applicant who seeks to obtain a license without having to pass one or more licensing exams may be granted a waiver of one or more of those exams only if the applicant has never failed the exams. The proposed rule would allow the person who failed an exam to apply for a waiver of the exam after five years have passed since the applicant last failed the exam. Five years offers an applicant sufficient time to gain further education and experience that would possibly qualify the person to become licensed without the need to take the exam the applicant previously failed.

#### FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the rules are in effect these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

#### PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section includes ensuring that TBPG rules are clear and consistent as they relate to geoscience licensure in Texas and as they relate to the examination requirements for licensure in all three disciplines: Geology, Geophysics, and Soil Science. There will be no anticipated economic cost to individuals who are required to comply with the proposed section.

#### SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

- (1) the proposed rules do not create or eliminate a government program;
- (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rules do not require an increase or decrease in fees paid to the agency;

(5) the proposed rules do not create a new regulation;

(6) the proposed rules do not expand or repeal an existing regulation but it does limit a current regulation in that it allows for people who previously would be unable to apply for an examination waiver to now be able to apply for such a waiver after five years;

(7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and

(8) the proposed rules do not positively or adversely affect this state's economy.

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

Mr. Truan has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Comments on the proposed amendment may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 1801 Congress, Suite 7.800, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to [rtruan@tbpgeoscientists.gov](mailto:rtruan@tbpgeoscientists.gov). Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties; §1002.255, which authorizes the Board to establish license eligibility requirements; and §1002.259, which authorizes the Board to waive any requirement for licensure except for the payment of required fees.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151 and 1002.259.

§851.22. *Waivers and Substitutions: Policy, Procedures, and Criteria.*

- (a) Introduction: The Texas Board of Professional Geoscientists is charged with the responsibility of issuing a license to engage in the public practice of geoscience in the state of Texas only to those indi-

viduals who meet the qualifications for licensure, as provided by Texas law. The successful completion of the required examination for the specific discipline is an essential element in the Professional Geoscientist licensure process. The Texas Geoscience Practice Act (TGPA) (Texas Occupations Code, Chapter 1002, §1002.259) provides that "Except for the payment of required fees, the board may waive any of the requirements for licensure by a two-thirds vote of the entire board if the applicant makes a written request and shows good cause and the board determines that the applicant is otherwise qualified for a license."

(1) An applicant for licensure as a Professional Geoscientist may request a waiver by submitting a copy of Form VI - "Request for Waiver of Licensing Requirement - Board Policy and Procedures," along with supporting documentation. Only an applicant for licensure may request a waiver. An applicant must have submitted a complete application, supporting documentation (such as transcripts and qualifying experience record), and applicable fees for a waiver request to be considered.

(2) Once a request for a waiver and all relevant documents and information supporting the request have been received, subject to scheduling logistics, the request will be placed on the next available meeting of the TBPG's Application Review and Continuing Education Committee.

(b) **Guidance Policy:** The following policy was developed by the TBPG Board and is intended to be guidance for the Application Review and Continuing Education Committee and the Board in consideration of a request for waiver. In accordance with TOC §1002.259, an approval of a waiver request requires a vote of two-thirds of the TBPG Appointed Board (6 affirmative votes), regardless of the number of Board members in attendance. A request for the substitution of experience for education (provided by TOC §1002.255(b)) requires a simple majority vote of a quorum of the TBPG Appointed Board to be approved.

(c) **TBPG's Application Review and Continuing Education Committee Review:** TBPG's Application Review and Continuing Education Committee will review the request and supporting documentation and recommend to the full TBPG Board to grant or not grant the requested waiver. An applicant should provide a written justification, along with supporting documentation. An applicant may also appear before the Committee and the full Board to provide testimony to support the request. All requests the Committee recommends for approval will be scheduled for review by the full Board. Requests the Committee does not recommend for approval will not be submitted to the full Board for review, unless the applicant requests review by the full Board.

(d) **TBPG's Board Initial Review:** TBPG Appointed Board will review requests the Committee recommends for approval and supporting documentation and will determine whether or not to approve the request (grant the requested waiver). An applicant whose request for a waiver or substitution was denied and who believes that there is additional information that was not available to the Board when it reviewed the request, may submit additional information to staff regarding the current application, along with a written request that the Board reconsider the request. If staff determines that new information has been submitted that may be relevant to the Board's review of an application/request, then staff will schedule the application/waiver request for reconsideration. In the review of a request to reconsider its decision on an application/waiver request, because new information has been submitted, the Board will first determine by a simple majority vote whether to reconsider the application/waiver request, based on whether relevant new information has been submitted. If the Board determines by vote that the new information warrants reconsideration of an application/waiver request, the Board will reconsider the waiver

request, including all of the new information available at that time. An applicant may appear before the Board and present information related to the request. The Board will reconsider its decision on a waiver request only once.

(e) **Examination Waiver Requirements and Criteria.**

(1) For TBPG's Appointed Board to waive an examination, an applicant must:

(A) Meet all other qualifications for licensure (qualifying work experience, education, documentation relating to criminal, disciplinary, and civil litigation history);

(B) Meet the criteria in the policy for the specific examination that is the subject of the waiver request; and

(C) Have not failed the examination that is the subject of the waiver request in the last five years.

(2) Work experience an applicant submits pursuant to the following examination waiver policies must meet the criteria for qualifying work experience under TBPG rule §851.23 regarding qualifying experience record.

(3) ASBOG® Fundamentals of Geology Examination Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S. and 15 years qualifying work experience;

(B) M.S. and 13 years qualifying work experience; or

(C) Ph.D. and 10 years qualifying work experience.

(4) ASBOG® Practice of Geology Examination Waiver. An applicant must meet minimum criteria in either Generalized Practice Experience or Specialized Practice Experience.

(A) Generalized practice experience (must meet all four criteria):

(i) Completed twenty (20) years of geosciences work experience;

(ii) Completed ten (10) years of supervisory experience (three or more individuals under supervision);

(iii) Completed coursework in six of the eight following ASBOG® task domains:

(I) Field geology;

(II) Mineralogy, petrology, and geochemistry;

(III) Sedimentology, stratigraphy, and paleontology;

(IV) Geomorphology, surficial processes, and quaternary geology;

(V) Structure, tectonics, and seismology;

(VI) Hydrogeology;

(VII) Engineering geology; or

(VIII) Economic geology and energy resources;

and[-]

(iv) Demonstrate the ability to plan and conduct geosciences investigations considering public health, safety, and welfare.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the ASBOG® task domains. One factor TBPG will consider is whether the examination is not relevant to, or largely

beyond the scope of, the applicant's specialized experience and the applicant's intended field of practice.

(5) Council of Soil Science Examination (CSSE) - Fundamentals of Soil Science Waiver. An applicant must have acquired one of the following combinations of education and work experience:

- (A) B.S. and 15 years qualified work experience;
- (B) M.S. and 13 years of qualified work experience; or
- (C) Ph.D. and 10 years of qualified work experience.

(6) Council of Soil Science Examination (CSSE) - Professional Practice examination. An applicant must meet minimum criteria in either Generalized practice experience or Specialized practice experience:

(A) Generalized practice experience (must meet all four criteria):

- (i) Completed twenty (20) years of soil science work experience;
- (ii) Completed ten (10) years of supervisory experience;
- (iii) Completed coursework in six of the eight following CSSE Professional Practice Performance Objective (PPPO) domains:

- (I) Soil chemistry;
- (II) Soil mineralogy;
- (III) Soil fertility and nutrient management;
- (IV) Soil physics;
- (V) Soil genesis and classification;
- (VI) Soil morphology;
- (VII) Soil biology and soil ecology; ~~or~~ and
- (VIII) Soil and land use management; ~~and~~ and

(iv) Demonstrate the ability to plan and conduct soil science investigations considering public health, safety, and welfare.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the CSSE PPPO domains. One factor TBPG will consider is whether the examination is not relevant to, or largely beyond the scope of, the applicant's specialized experience and the applicant's intended field of practice.

(7) Texas Fundamentals of Geophysics Examination (TFGE). No waiver is available.

(8) Texas Geophysics Examination (TGE). An applicant must meet minimum criteria in either Generalized Practice Experience or Specialized Practice Experience.

(A) Generalized practice experience (must meet all four criteria):

- (i) Completed twenty (20) years of geophysics work experience;
- (ii) Completed ten (10) years of supervisory experience;
- (iii) Completed coursework in six of the eight areas:
  - (I) Fundamentals of Geophysics;
  - (II) Geophysical Field Methods;

- (III) Geophysical Signal Processing;
- (IV) Exploration/Applied Geophysics;
- (V) Engineering & Environmental Geophysics;
- (VI) Hydrogeophysics;
- (VII) Seismology; ~~or~~ and
- (VIII) Near-surface Geophysics: Magnetics, Electromagnetic, Gravity, Electrical Resistivity, Seismic; ~~and~~ and

(iv) Demonstrate the ability to plan and conduct geophysical surveys considering public health, safety, and welfare.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the tasks domains. One factor TBPG will consider is whether the examination is not relevant to, or largely beyond the scope of, the applicant's specialized experience and the applicant's intended field of practice.

(f) Substitution of Work Experience for Educational Requirements. Before the Appointed Board considers an application for substitution of work experience for an education requirement, the applicant seeking approval of the substitution must meet all of the following minimum criteria:

(1) The applicant must pass, within three (3) attempts, the appropriate qualifying licensing examination (or a substantially similar examination), depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice of Geology examinations administered by ASBOG®;

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE);

(2) The applicant must have at least 15 years of qualifying work experience, including the ability to apply scientific methods and to solve problems;

(3) The applicant must demonstrate an established record of continuing education and workshop participation in geoscience fields; and

(4) The applicant is highly encouraged to appear before the Application Review and Continuing Education Committee for presentation of qualifications.

(g) Waiver of Education Requirement - Generally. Before the Appointed Board considers an application for education waiver, the applicant seeking a waiver of the education requirement must demonstrate mastery of a minimum required knowledge base in geoscience by meeting the following criteria:

(1) The applicant must demonstrate all ~~both~~ of the following:

(A) A four-year degree in a field of basic or applied science that includes at least 15 hours of courses in geosciences from an accredited institution of higher education or the equivalent of a total of at least 15 hours of courses in geoscience from an accredited institution of higher education and/or other educational sources, as determined by the Appointed Board;

(B) An established record of continuing education and workshop participation in geoscience fields; and



(C) The Appointed Board may also determine that an individual applicant has satisfactorily completed other equivalent educational requirements after reviewing the applicant's educational credentials.

(2) The applicant must have at least eight years of qualifying geoscience work experience; and

(3) The applicant must pass the appropriate qualifying examination, depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice examinations administered by ASBOG®;

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE).

(h) Education Waiver for License in Geology Discipline - Fundamentals. An individual who plans to apply for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Fundamentals of Geology examination as long as the applicant:

(1) Has submitted any other necessary forms, documents, and fees; and

(2) Has acknowledged that the Appointed Board must approve an education waiver request or approve the substitution of experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request to substitute experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(i) Education Waiver for License in Geology Discipline - Practice. An applicant for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Practice of Geology examination as long as the applicant:

(1) Meets or is within six months of meeting the qualifying experience requirement for licensure;

(2) Submits the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);

(3) Has submitted a request for an education waiver or a substitution of experience for education;

(4) Has submitted any other necessary forms, documents, and fees; and

(5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(j) Education Waiver for License in Geophysics Discipline. An applicant for licensure as a Professional Geoscientist in the discipline of geophysics who does not fully meet the education requirement for licensure may take the Texas Geophysics Examination as long as the applicant:

(1) Meets or is within six months of meeting the qualifying experience requirement for licensure;

(2) Submits the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);

(3) Has submitted a request for an education waiver or a substitution of experience for education;

(4) Has submitted any other necessary forms, documents, and fees; and

(5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after the Texas Geophysics Examination has been passed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 2, 2023.

TRD-202303666

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 936-4428



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER W. CONSUMER RIGHTS NOTICES

###### 28 TAC §5.9970, §5.9971

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.9970 and §5.9971, concerning consumer rights notices for personal automobile insurance and homeowners, dwelling, and renters insurance. Insurance Code §501.156 requires the Office of Public Insurance Counsel (OPIC) to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance that TDI regulates.

**EXPLANATION.** Under Insurance Code Chapter 501, OPIC represents the interests of insurance consumers in Texas. OPIC is required by Insurance Code §501.156 to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates. These notices explain how consumer rights are affected by applicable statutes and rules and are to be distributed by an insurer to each policyholder on issuance of a policy.

TDI received a petition from OPIC on August 30, 2022, requesting that TDI adopt a revised consumer rights notice for personal automobile insurance (Auto Bill of Rights). TDI's proposal revis-

ing the Auto Bill of Rights was published in the April 14, 2023, issue of the *Texas Register*. However, following the publication of the proposal in the *Texas Register*, the 88th Legislature enacted legislation impacting the Auto Bill of Rights. Therefore, TDI has withdrawn its April 14, 2023, proposal amending the Auto Bill of Rights.

TDI received another petition from OPIC on August 28, 2023, requesting adoption of revisions to the Auto Bill of Rights and the consumer rights notice for Homeowners, Dwelling, and Renters Insurance (Homeowners Bill of Rights). The current versions of both the Auto Bill of Rights and the Homeowners Bill of Rights were adopted in May 2021 and are found in 28 TAC §5.9970 and §5.9971, respectively.

Since the last amendments, the Legislature enacted legislation affecting the rights of insurance consumers. Senate Bill 1602, 87th Legislature, 2021, added Insurance Code §551.1053, requiring mandatory nonrenewal of private passenger automobile policies when an insured fails or refuses to cooperate with an insurer in the investigation, settlement, or defense of a claim or action.

House Bill 2065, 88th Legislature, 2023, amended Insurance Code §551.1053 to apply only to third-party liability claims or actions.

House Bill 1900, enacted by the 88th Legislature, 2023, amended the Insurance Code to require notice of nonrenewal no later than the 60th day before the date of nonrenewal of certain insurance policies, including personal automobile insurance and homeowners, dwelling, and renters insurance. The bill amended Insurance Code §551.105, changing the requirement from 30 days' notice to 60 days' notice.

House Bill 1706, enacted by the 88th Legislature, 2023, added new Insurance Code §4102.007, specifying that a commercial or residential property insurance policy may not include a provision prohibiting an insured from contracting with a public insurance adjuster for services.

The petition received from OPIC on August 28, 2023, updates the Auto Bill of Rights to include changes made by SB 1602, HB 2065, and HB 1900, and updates the Homeowners Bill of Rights to include changes made by HB 1900 and HB 1706.

Insurers must distribute the Auto Bill of Rights or Homeowners Bill of Rights to each policyholder on issuance of a new policy or on renewal if the updated consumer notice was not previously sent. Amending the Auto Bill of Rights and Homeowners Bill of Rights ensures that insurers distribute current and accurate consumer rights information to policyholders.

The proposed amendments to the sections are described in the following paragraphs.

**Section §5.9970.** Amendments to §5.9970 adopt updated versions of the English and Spanish translation of the Auto Bill of Rights by revising FIGURE 1: 28 TAC §5.9970(b) and FIGURE 2: 28 TAC §5.9970(b).

Updates to both figures implement the HB 1900 amendment to Insurance Code §551.105, changing the required lead time for notice of nonrenewal in paragraph 21 from 30 to 60 days. Updates to both figures also implement Insurance Code §551.1053, which was added by SB 1602, 87th Legislature, and then amended by HB 2065, 88th Legislature, by inserting a new paragraph 22 that describes the insurer's duty to nonrenew a policy for failure to cooperate in the investigation, settlement, or

defense of a third-party liability claim. In addition, the TDI Consumer Protection post office box address for filing a complaint by mail is removed from page 1 of each notice because TDI is updating the methods used for receiving complaints.

Amendments to §5.9970(b), (c), and (e) change "2021" to "2024" to reference the updated versions of the forms, and amendments to §5.9970(f) specify that insurers must use the new Auto Bill of Rights by May 1, 2024, but that until that date insurers may use either the existing Auto Bill of Rights or the new Auto Bill of Rights.

These amendments will ensure that the Auto Bill of Rights is consistent with the law and that consumers are informed of their rights related to their personal automobile insurance policies.

**Section §5.9971.** Amendments to §5.9971 adopt updated versions of the English and Spanish translation of the Homeowners Bill of Rights by revising FIGURE 1: 28 TAC §5.9971(b) and FIGURE 2: 28 TAC §5.9971(b).

Updates to both figures implement Insurance Code §4102.007, which was added by HB 1706, by inserting a new paragraph 9, explaining that residential property policies may not prohibit consumers from contracting with a public insurance adjuster. Updates to both figures also implement the HB 1900 amendment to Insurance Code §551.105 by changing the required lead time for notice of nonrenewal in paragraph 26 from 30 to 60 days. In addition, the TDI Consumer Protection post office box address for filing a complaint by mail is removed from page 1 of each notice because TDI is updating the methods used for receiving complaints.

Amendments to §5.9971(b), (c), and (e) change "2021" to "2024" to reference the updated versions of the forms, and amendments to §5.9971(f) specify that insurers must use the new Homeowners Bill of Rights by May 1, 2024, but that until that date insurers may use either the existing Homeowners Bill of Rights or the new Homeowners Bill of Rights.

These amendments are intended to ensure that the Homeowners Bill of Rights is consistent with the law and that consumers are informed of their rights related to their residential property insurance policies.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** John Mooney, manager of the Property and Casualty Lines Office, has determined that for each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal.

Mr. Mooney does not anticipate any measurable effect on local employment or the local economy as a result of the enforcement or administration of this proposal because the proposal simply updates documents insurers are already required to provide.

**PUBLIC BENEFIT AND COST NOTE.** For each of the first five years the proposed amendments are in effect, Mr. Mooney expects public benefits to include consumers receiving an accurate and understandable summary of their rights related to their personal automobile and residential property insurance policies and facilitating public awareness of insurance consumer rights.

Mr. Mooney expects that the proposed amendments will impose an economic cost on persons required to comply. The cost will vary based on the lines of insurance and number of policyholders for each insurer.

Insurance Code §501.156 and TDI rules require insurers to deliver the Auto Bill of Rights and Homeowners Bill of Rights to policyholders at the time a policy is issued or renewed. Because the proposed amendment updates existing documents already required to be provided with insurance policies, the amendment does not impose additional duties regarding new policies. Insurers must provide policyholders with copies of the updated consumer rights notices at the first renewal after the updated bill of rights is effective.

If the insurer uses electronic delivery as permitted under Insurance Code Chapter 35, the insurer may send the updated consumer rights notice electronically, avoiding paper and printing costs. If an insurer prints paper copies instead, TDI expects the cost to be between \$0.06 and \$0.08 per page for printing and paper. The English and the Spanish versions of both the Auto Bill of Rights and the Homeowners Bill of Rights are seven pages long.

An insurer's cost of complying with the requirements will depend on the number of renewals that the insurer provides and on the number of paper consumer rights notices the insurer sends. TDI expects that each insurer will have the information necessary to determine its individual cost, including the number of pages to be printed, in-house printing costs, and commercial printing costs.

TDI does not anticipate additional costs for mailing or electronic distribution because the new bill of rights will be sent out in new and renewal packets that the insurer already sends.

TDI estimates that insurers may face administrative costs associated with updating the consumer rights notices in their systems. While it is not feasible to determine the actual cost of any employees needed to comply with the requirement, TDI estimates that amending the consumer rights notices may require the following resources:

- between eight and 14 hours of compliance officer staff time to update internal procedures to ensure the revised consumer rights notices are distributed; and
- between eight and 14 hours of computer programming staff time to prepare and test systems to begin distributing the revised consumer rights notices.

Staff costs may vary depending on the skill level required, the number of staff required, and the geographic location where work is done. The 2022 median hourly wage for these positions in Texas was:

- compliance officer, \$32.35; and
- computer programmer, \$42.31;

as reported by the Texas Wages and Employment Projections database, which is developed and maintained by the Texas Workforce Commission and located at [www.texaswages.com/WDAWages](http://www.texaswages.com/WDAWages).

Information on median wages in other states may be obtained directly from the federal Bureau of Labor Statistics website at [www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm).

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that this proposal may have an adverse economic effect on any insurers that are small or micro businesses. Data provided by the Texas Comptroller of Public Accounts for use in calculating the number of small businesses indicates that there are approximately 630 insurance carriers that are considered small businesses as that term is defined

in Government Code §2006.001. This Economic Impact Statement and Regulatory Flexibility Analysis and the cost analysis in the Public Benefit and Cost Note section of this proposal applies to the portion of insurance carriers that write personal automobile or residential property insurance policies and are small and micro businesses. The total cost to an insurer in providing the revised consumer rights notices to its policyholders is not wholly dependent on the size of the insurer. Instead, the cost depends on the insurer's number of current and future policyholders. TDI does not anticipate an impact on any rural communities because the requirement to distribute consumer rights notices under Insurance Code §501.156 applies to insurers, not to rural communities.

In accordance with Government Code §2006.002(c-1), TDI considered the following alternatives to minimize any adverse impact on small or micro businesses while still accomplishing the proposal's objectives:

(1) TDI considered not proposing the new rules, but Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates. The statute requires these consumer rights notices to be distributed upon issuance of a policy by insurers to all applicable policyholders. Updating the consumer rights notices is necessary to reflect legislative actions that affect the rights of insurance policyholders despite any possible impact on small or micro businesses. To ensure compliance with the statutory requirements, TDI rejected this option.

(2) TDI also considered imposing different rules for small or micro businesses, but ultimately rejected this option for the reason previously stated. The proposed amendments are necessary to comply with statutes and rules that require all insurers to issue the consumer rights notices to policyholders on issuance of a new or renewal policy. These statutory requirements apply to all insurers writing these lines of insurance, regardless of size, and any modification for small or micro businesses would not change the underlying requirement for insurers to provide the consumer rights notices. For these reasons, TDI rejected this option.

(3) Finally, TDI considered exempting small or micro businesses from the rule requirements, but ultimately rejected this option for the reason previously stated. The purpose of any consumer bill of rights is to notify each policyholder of their rights applicable to those personal lines of insurance. Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance that TDI regulates. These statutory requirements apply to all insurers writing these lines of insurance, regardless of size, and cannot be waived for small or micro businesses. For these reasons, TDI rejected this option.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. Insurance Code §501.156 requires OPIC to submit for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates, to be distributed on issuance of a policy by an insurer to each policyholder under TDI rules. Updates to the consumer rights notices are necessary to ensure that consumers are aware of their rights as impacted by SB 1602, HB 2065, HB 1900, and HB 1706.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years the amendments are in effect, the rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. This proposal amends two consumer rights notices that insurers are required to provide. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments for the proposal that are received by TDI no later than 5:00 p.m., central time, on November 13, 2023. Send your comments to ChiefClerk@tdi.texas.gov or by mail to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a separate request before the end of the comment period to ChiefClerk@tdi.texas.gov or by mail to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

STATUTORY AUTHORITY. TDI proposes amendments to §5.9970 and §5.9971 under Insurance Code §501.156 and §36.001.

Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates, to be distributed under TDI rules.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.9970 implements Insurance Code §§501.156, 551.1053, and 551.105. Section 5.9971 implements Insurance Code §§501.156, 4102.007, and 551.105.

§5.9970. *Personal Automobile Insurance Consumer Bill of Rights.*

(a) For purposes of this section, "insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance in this state. The term includes an affiliate, as described by Insurance Code §823.003(a), if that affiliate is authorized to write and is writing personal automobile insurance in this state.

(b) The Texas Department of Insurance adopts the 2024 [2021] version of the Consumer Bill of Rights - Personal Automobile Insurance (Auto Bill of Rights), and the Spanish language translation, as developed and submitted by the Office of Public Insurance Counsel:

Figure 1: 28 TAC §5.9970(b)

[Figure 1: 28 TAC §5.9970(b)]

Figure 2: 28 TAC §5.9970(b)

[Figure 2: 28 TAC §5.9970(b)]

(c) All insurers writing personal automobile insurance policies must provide with each new policy of personal automobile insurance a copy of the 2024 [2021] version of the Auto Bill of Rights. At the consumer's request, the insurer may provide an electronic copy of the Auto Bill of Rights instead of a hard copy. The insurer must provide the Auto Bill of Rights with each renewal notice for personal automobile insurance unless the insurer has previously provided the policyholder with the 2024 [2021] version of the Auto Bill of Rights.

(d) The Auto Bill of Rights must appear in no less than 10-point type and be on separate pages with no other text on those pages.

(e) Insurers must provide the Spanish language version of the 2024 [2021] version of the Auto Bill of Rights to any consumer who requests it.

(f) Insurers must provide the applicable Auto Bill of Rights included in this section beginning May 1, 2024 [~~November 15, 2021~~]. Before that date, insurers may provide the Auto Bill of Rights either as it currently is included in this section or as it was included in the section as the section was amended to be effective May 16, 2021 [~~January 31, 2013~~].

§5.9971. *Homeowners, Dwelling, and Renters Insurance Consumer Bill of Rights.*

(a) For purposes of this section, "insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by Insurance Code §823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association or the Texas Fair Plan Association.

(b) The Texas Department of Insurance adopts the 2024 [2021] version of the Consumer Bill of Rights - Homeowners, Dwelling, and Renters Insurance (Homeowners Bill of Rights), and the Spanish language translation, as developed and submitted by the Office of Public Insurance Counsel:

Figure 1: 28 TAC §5.9971(b)

[Figure 1: 28 TAC §5.9971(b)]

Figure 2: 28 TAC §5.9971(b)

[Figure 2: 28 TAC §5.9971(b)]

(c) All insurers writing homeowners, dwelling, or renters insurance must provide with each new policy of any such insurance a copy of the 2024 [2021] version of the Homeowners Bill of Rights. At the consumer's request, the insurer may provide an electronic copy of the Homeowners Bill of Rights instead of a hard copy. The insurer must provide the Homeowners Bill of Rights with each renewal notice for any such insurance unless the insurer has previously provided the policyholder with the 2024 [2021] version of the Homeowners Bill of Rights.

(d) The Homeowners Bill of Rights must appear in no less than 10-point type and be on separate pages with no other text on those pages.

(e) The insurer must provide the Spanish language version of the 2024 [2021] version of the Homeowners Bill of Rights [ - Revised 2021] to any consumer who requests it.

(f) Insurers must provide the applicable Homeowners Bill of Rights included in this section beginning May 1, 2024 [November 15, 2021]. Before that date, insurers may provide the Homeowners Bill of Rights either as it is currently included in this section or as it was included in the section as the section was amended to be effective May 16, 2021 [~~§5.9970 of this title as that section was amended to be effective January 31, 2013~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 28, 2023.

TRD-202303589

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 676-6555



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 16. COMPTROLLER GRANT PROGRAMS

##### SUBCHAPTER B. TEXAS BROADBAND DEVELOPMENT OFFICE [PROGRAM]

##### DIVISION 1. BROADBAND DEVELOPMENT MAP

#### 34 TAC §§16.21 - 16.24

The Comptroller of Public Accounts proposes new §16.21, concerning broadband development map; §16.22, concerning map challenges and criteria; §16.23, concerning challenge process and deadlines; §16.24, concerning map challenge determinations. These new sections implement changes to Government Code, §4901.0109, made by Senate Bill 1238, 88th Legislature, R.S., 2023. The new sections will be located in Subchapter B, in new Division 1 (Broadband Development Map).

The comptroller also proposes to rename Subchapter B as Texas Broadband Development Office.

The new sections replace §16.33, concerning designated area eligibility, and §16.34, concerning designated area reclassification, which the comptroller will repeal in a separate rulemaking.

Section 16.21 implements the requirement for the comptroller to create, and annually update, a broadband development map depicting the availability of broadband service for each broadband serviceable location in this state. As required by Senate Bill 1238, the new section updates the minimum information that must be displayed on the map regarding the availability of broadband service for each designated area. The section updates the

scope of designated areas from a census block level to a county level perspective to provide a more relatable way to visualize broadband availability but retains the discretion of the comptroller to adjust the scope as needed if displaying the required information is not technically feasible or impractical at the county level.

Section 16.22 permits internet service providers and political subdivisions of this state to submit challenges to the broadband development map. Challengers will be permitted to challenge the classification of broadband serviceable locations as shown on the broadband development map. The section limits the reasons for which a challenge can be submitted and requires the office to publish the requirements and criteria for submitting a challenge on its website. The section will also limit the ability to submit a challenge if the comptroller adopts the federal broadband map by imposing a preliminary requirement to first submit a challenge to the federal broadband map before submitting a challenge to the state broadband map.

Section 16.23 outlines the challenge process and deadlines. The section gives the office the discretion to reject a challenge without further action if the challenge does not comply with the requirements of the section or criteria established by the office. To ease administration, the section changes the manner that required notices may be provided to affected broadband service providers and political subdivisions.

Section 16.24 establishes the criteria the office must consider in making a map challenge determination, including: the availability of reliable broadband service; actual internet speed and reliability data; the existence or non-existence of existing federal commitments; and, any other information the office determines may be useful in making a determination. The section tracks statutory language regarding when a location that is subject to an existing federal commitment for the deployment of broadband services may be reclassified as eligible to receive funds and re-adopts provisions for recapturing funds if, after making an award, the office later determines that a location was ineligible to receive funding.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by implementing the current statute. There would be no significant anticipated economic cost to the public. The proposed new rules would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Greg Conte, Director, Broadband Development Office, at [broadband@cpa.texas.gov](mailto:broadband@cpa.texas.gov) or at P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under Government Code, §4901.0109, which permits the comptroller to adopt rules as

necessary to implement Chapter 490I regarding the Texas Broadband Development Office.

The new sections implement Government Code, Chapter 490I.

§16.21. Broadband Development Map.

(a) The comptroller shall create, update annually, and publish on the comptroller's website a broadband development map depicting the availability of broadband service for each broadband serviceable location in this state. The office shall use the best available information, including information available from the Federal Communications Commission, political subdivisions, and broadband service providers, to create or update the map.

(b) Except as provided by subsection (c) of this section, for the purpose of developing the broadband development map, the scope of a designated area in this state shall consist of a county.

(c) If the comptroller determines that developing the broadband development map at the county level is not technically feasible or practical, the comptroller may develop the map using a smaller geographic unit for which information is available from the Federal Communications Commission.

(d) The comptroller shall, at a minimum, display for each designated area on the broadband development map:

(1) each unserved, underserved, and served broadband serviceable location;

(2) an indication of whether each broadband serviceable location is ineligible to receive funding on account of an existing federal commitment to deploy qualifying broadband service;

(3) the number of broadband service providers that serve the designated area;

(4) an indication of whether the designated area has access to internet service that is not broadband service, regardless of the technology used to provide the service;

(5) each public school campus with an indication of whether the public school campus has access to broadband service; and

(6) the number and percentage of unserved, underserved, and served broadband serviceable locations within the designated area.

§16.22. Map Challenges; Criteria.

(a) Subject to subsection (c) of this section, a broadband service provider or a political subdivision of this state may challenge the designation of a broadband serviceable location located in this state and petition the office to reclassify the location on the broadband development map.

(b) A challenge submitted under this section must be submitted on forms and contain the information prescribed by the office. The office shall publish on its website the requirements and criteria for submitting a challenge under this section.

(c) A challenge seeking reclassification of a broadband serviceable location may only be made on the following basis:

(1) that reliable broadband service at the location is or is not available within 10 days of a request for service;

(2) that the actual speed of the fastest available service tier at the location does or does not meet the broadband service speed thresholds as established by Government Code, §490I.0105(a);

(3) that the actual round-trip latency of broadband service at the location exceeds 100 milliseconds;

(4) that the availability of reliable broadband service at the location is subject to a data cap that results in actual speeds of the fastest available service tier falling below the broadband service speed thresholds as established by Government Code, §490I.0105(a); or

(5) that the location is or is not subject to an existing federal commitment to deploy qualifying broadband service to the location.

(d) If the comptroller adopts a map produced by the Federal Communications Commission as provided under Government Code, §490I.0105(q), a challenge may only be submitted under this section if the person or entity submitting the challenge provides evidence that the person or entity previously submitted a successful challenge to the Federal Communications Commission for the broadband serviceable locations for which the entity is seeking a reclassification.

§16.23. Challenge Process; Deadlines.

(a) A challenge under this subchapter must be submitted to the office not later than the 60th day after the broadband development map is published on the comptroller's website.

(b) The office may reject a challenge without further action if the challenge is not submitted on forms prescribed by the office or does not otherwise comply with this division or any criteria established by the office as provided by this subchapter.

(c) The office shall provide notice of an accepted challenge to each affected political subdivision and broadband service provider by posting notice of the challenge on the comptroller's website. For the purposes of this section, an affected political subdivision or broadband service provider shall be deemed to have received notice on the date the notice is posted on the comptroller's website.

(d) Not later than the 45th day after the date that the office posts the notice required under subsection (c) of this section, an impacted political subdivision or a broadband service provider may provide information to the office showing whether the broadband serviceable locations that have been challenged should or should not be reclassified.

(e) Not later than the 75th day after the date that the office posts the notice required under subsection (c) of this section, the office shall determine whether to reclassify the challenged broadband serviceable locations and shall update the map as necessary.

§16.24. Challenge Determinations.

(a) The office shall consider the following in making a determination of whether to reclassify a designated area:

(1) the availability of reliable broadband service;

(2) an evaluation of actual Internet speed test and reliability data;

(3) the existence or non-existence of an existing federal commitment to deploy qualifying broadband service to a location; and

(4) any other information the office determines may be useful in determining whether a location should be reclassified.

(b) A broadband serviceable location that is classified as a served location solely because the location is subject to an existing federal commitment to deploy qualifying broadband service may be reclassified if:

(1) federal funding is forfeited or the recipient of the funding is disqualified from receiving the funding; and

(2) the location is otherwise eligible to receive funding under the program.

(c) A determination made by the office under this subsection is not a contested case for purposes of Government Code, Chapter 2001.

(d) If after making an award the office determines that at the time of making the award a broadband serviceable location was not eligible to receive funding under this subchapter, the office may proportionately reduce the amount of the award and the grant recipient shall be required to return any grant funds that were awarded as a result of the classification error. The office shall reduce the amount required to be returned under this subsection if the office determines, in its sole discretion, that the grant funds or any portion thereof were expended in good faith.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 2, 2023.

TRD-202303649

Victoria North

General Counsel, Fiscal and Agency Affairs Legal Services

Comptroller of Public Accounts

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 475-2220



## DIVISION 2. BROADBAND DEVELOPMENT PROGRAM

### **34 TAC §§16.30, 16.31, 16.35 - 16.38, 16.40 - 16.42**

The Comptroller of Public Accounts proposes amendments to §16.30, concerning definitions, § 16.31, concerning notice of funds availability, §16.35, concerning program eligibility requirements, §16.36, concerning application process generally, §16.37, concerning overlapping applications or project areas, §16.38, concerning special rule for overlapping project areas in noncommercial applications, §16.40, concerning evaluation criteria, §16.41, concerning application protest process, and §16.42, concerning awards; grant agreement.

The comptroller proposes to rename Subchapter B as Texas Broadband Development Office, reorganize it into two divisions, and move all sections located in Subchapter B to Division 2 (Broadband Development Program).

The amendments to §16.30 add new definitions.

The amendments to §16.31 expand the methods by which the office may publish the required notice of funds availability.

The amendments to §16.35 make conforming changes required by Senate Bill 1238, 88th Legislature, R.S., 2023, by deleting the prohibition against making an award to a broadband service provider that does not report certain information to the office and renumbering accordingly.

The amendments to §16.36 provide the office with greater discretion to reject an application that does not comply with applicable program requirements on its face. The amendments also update the reasons for which an applicant may amend and resubmit an application after a protest has been upheld. The amendments also make conforming changes required by Senate Bill 1238, 88th Legislature, R.S., 2023, by prohibiting a broadband service provider from submitting an application protest if the provider has not provided certain information requested by the office.

The amendments to §16.37 revise and streamline the process by which overlapping project locations are resolved by removing the requirement allowing broadband service providers to collaboratively resolve project area overlaps and providing for the office to independently resolve the overlapping areas to avoid duplication. The proposed amendments make changes to how the remaining project area is calculated after overlapping project areas are resolved by the office. The proposed amendments also require the office to provide notice to applicants affected by the determination of the office.

The amendments to §16.38 revise the process by which overlapping project locations are resolved between applications from noncommercial broadband service providers and applications from commercial broadband service providers.

The amendments to §16.40 provide for a new process through which the office shall establish eligibility and award criteria and requires the office to provide notice of the criteria in a notice of funds availability. The amendments expand the mandatory criteria that the office must consider when establishing the eligibility and award criteria, including establishing a preference for fiber optic projects while also allowing the office to consider non-fiber optic projects for high-cost areas.

The amendments to §16.41 update the application protest process by requiring the office to publish on its website the criteria and requirements for submitting a protest. The amendments clarify the basis for which a protest may be submitted and eliminates specific documentation requirements set out by rule. The amendments provide additional notice requirements for applicants affected by a protest determination and makes changes to when an affected applicant may submit an amended application if a protest is upheld.

The amendments to §16.42 clarify that the restriction on the use of grant funds only applies to grants for the deployment of broadband infrastructure.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rules would benefit the public by conforming the rule to current statute. The proposed amended rules would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Greg Conte, Director, Broadband Development Office, at [broadband@cpa.texas.gov](mailto:broadband@cpa.texas.gov) or at P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §4901.0109, which permits the comptroller to adopt rules as necessary to implement Chapter 4901 regarding the Texas Broadband Development Office.

The amendments implement Government Code, Chapter 490I.

*§16.30. Definitions.*

As used in this subchapter and in these rules, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A person that has submitted an application for an award under this subchapter.

(2) Application protest period--A period of at least thirty days beginning on the first day after an application is posted under §16.36(d) of this subchapter.

(3) Broadband service--Internet service that delivers transmission speeds capable of providing [a minimum download or upload threshold speed that are the greater of]:

(A) a download speed of not less than 25 Mbps [or faster; and an upload speed of three Mbps or faster as established under Government Code, §490I.0101] ; [or]

(B) an [the] upload speed of not less than three Mbps [or download threshold speeds for advanced telecommunications capability under 47 U.S.C. §1302 as adopted by the Federal Communications Commission and as published on the comptroller's website under Government Code, §490I.0101] ; and

(C) network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements.

(4) Broadband development map--The map adopted or created under Government Code, §490I.0105.

(5) Broadband serviceable location--A business or residential location in this state at which broadband internet service is, or can be, installed, including a community anchor institution.

(6) [(5)] Census block--The smallest geographic area for which the U.S. Bureau of the Census collects and tabulates decennial census data as shown on the most recent on Census Bureau maps.

(7) [(6)] Census tract--A cluster of census blocks consisting of small, relatively permanent statistical subdivisions of a county or statistically equivalent entity that can be updated by local participants prior to each decennial census as part of the U.S. Census Bureau's Participant Statistical Areas Program.

(8) [(7)] Commercial broadband service provider--A broadband service provider engaged in business intended for profit, a telephone cooperative, an electric cooperative, or an electric utility that offers broadband service or middle-mile broadband service for a fare, fee, rate, charge, or other consideration.

(9) Community anchor institution--An entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

(10) [(8)] Designated area--A census block or other area as determined under §16.33 of this subchapter.

(11) [(9)] Grant funds--Grants, low-interest loans, and other financial incentives awarded to applicants under this subchapter for the purpose of expanding access to and adoption of broadband service in designated areas determined to be eligible areas by the office under Government Code, §490I.0105.

(12) [(10)] Grant recipient--An applicant who has been awarded grant funds under this subchapter.

(13) [(11)] Mbps--Megabits per second.

(14) [(12)] Middle mile infrastructure--Any broadband infrastructure that does not connect directly to an end-user location, including a community anchor institution. The term includes: [broadband service--The provision of excess fiber capacity on an electric utility's electric delivery system or other facilities to an Internet service provider to provide broadband service. The term does not include provision of Internet service to end-use customers on a retail basis.]

(A) leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and

(B) wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links.

(C) The term does not include provision of Internet service to end-use customers on a retail basis.

(15) [(13)] Non-commercial broadband service provider--A broadband service provider that is not a commercial broadband service provider.

(16) [(14)] Office--The Broadband Development Office created under Government Code, §490I.0102.

(17) [(15)] Project area--The area, consisting of one or more broadband serviceable locations, identified by an applicant in which the applicant proposes to deploy broadband service or middle mile infrastructure [and consisting of the entirety of one or more contiguous designated areas that are eligible to receive funding under this subchapter].

(18) Public school--A school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12 and is operated by a governmental entity.

(19) Served location--A broadband serviceable location that has access to reliable broadband service that exceeds the minimum threshold for an underserved location or a location that is subject to an existing federal commitment to deploy qualifying broadband service.

(20) [(16)] Underserved location [area] --A broadband serviceable [designated area or] location [within a designated area] that does not have access to reliable broadband service.

(21) [(17)] Underserved location [area]--A broadband serviceable [designated area or] location [within a designated area] that has access to reliable broadband service but does not have [has] access to reliable broadband service with the capability of providing: [but lacks access to internet service offered with a download speed of at least 100 Mbps and an upload speed of at least 20 Mbps.]

(A) a download speed of not less than 100 Mbps;

(B) an upload speed of not less than 20 Mbps; and

(C) a network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements as established under Government Code, §490I.0101.

*§16.31. Notice of Funds Availability.*

(a) The office shall use one or more methods as necessary to provide notice of the availability of funds for competitive grant awards,



including publication [publish] in the *Texas Register* or *Electronic State Business Daily* [a notice that a notice of funds availability will be published on the Texas.gov eGrants] website. The comptroller may make available a copy of the notice of funds availability on the comptroller's website. For the purposes of these rules, the date the notice of funds availability is issued is the earlier of the first day the notice is published in the *Texas Register* or on the *Electronic State Business Daily* [Texas.gov eGrants] website.

(b) The notice of funds availability published under subsection (a) of this section [on the Texas.gov eGrants website] shall include:

- (1) the total amount of grant funds available for award;
- (2) the minimum and maximum amount of grant funds available for each application;
- (3) eligibility requirements;
- (4) application requirements;
- (5) award and evaluation criteria; and
- (6) the date by which applications must be submitted to the office;

(c) The notice may include:

- (1) limitations on the geographic distribution of grant funds;
- (2) the anticipated date of award; and
- (3) any other information the office determines is necessary for award.

#### §16.35. Program Eligibility Requirements.

(a) Eligible participants of the program include:

- (1) political subdivisions of this state;
- (2) commercial broadband service providers;
- (3) non-commercial broadband service providers; and
- (4) partnerships between political subdivisions of this state, commercial broadband service providers, noncommercial broadband service providers, or any combination thereof.

(b) The office may not award grant funds for a broadband serviceable location to an otherwise eligible participant under subsection (a)(3) of this section if a commercial broadband service provider has submitted an eligible application for the same location [area].

[(c)] An entity that does not provide information requested by the office under Government Code, §490I.0105, is not eligible to participate in the program and the office may not award grant funds to a broadband service provider that does not report information requested by the office under Government Code, §490I.0105-]

(c) [(d)] For the purposes of this subchapter, a joint application submitted by any combination [partnership consisting] of a political subdivision, commercial broadband service provider, or a non-commercial broadband service provider that includes at least one commercial broadband service provider shall be deemed to be an application submitted by a commercial broadband service provider.

#### §16.36. Application Process Generally.

(a) No award [awards] for competitive grant funding will be disbursed by the office except pursuant to an application submitted in accordance with this subchapter.

(b) An application for funding under this subchapter shall be submitted on the forms and in the manner prescribed by the office. The office may require that applications be submitted electronically.

(c) Prior to publication of application information pursuant to Government Code, §490I.0106(e), the office may undertake an examination to determine whether the application appears on its face to comply with applicable program requirements. The office may reject and take no further action on [not accept] an application that does not appear to comply with applicable program requirements on its face.

(d) The office shall for a period of at least 30 days publish on its website information from each accepted application, including the applicant's name, the project area targeted for expanded broadband service access or adoption by the application, and any other information the office considers relevant or necessary. The information will remain on the website for a period of at least 30 days before the office makes a decision on the application.

(e) During the 30-day application protest period described by subsection (d) of this section for an application, the office shall accept from any interested party a written protest of the application relating to whether the applicant or project is eligible for an award or should not receive an award based on the criteria prescribed by the office. A protest of an application must be submitted as provided under §16.41 of this subchapter.

(f) Notwithstanding any deadline for submitting an application, if the office upholds a protest on the grounds that one or more of the broadband serviceable locations in a project area is not eligible to receive funding [have access to broadband service], the applicant may resubmit an amended application as provided under §16.41 of this subchapter without the challenged locations not later than 30 days after the date that the office upheld the protest. An amended application may not include additional areas or locations not already included in the original application.

(g) If the office upholds a protest and the applicant resubmits an application in accordance with subsection (f) of this section, the resubmitted application is not subject to further protest.

(h) For the purposes of this section "interested party" means a person, including an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity, that resides, is located, or conducts business in the project [designated] area subject to protest and also includes a broadband service provider that is not located in the project [designated] area but who proposes to provide broadband service in the designated area.

(i) Notwithstanding subsection (e) of this section, a broadband service provider who has not provided information requested by the office under Government Code, §490I.0105 or §490I.01061, may not submit a protest of an application made under this subchapter.

#### §16.37. Overlapping Applications or Project Areas.

(a) Except as provided under §16.38 of this subchapter, if at the close of the application period the office has received multiple [one or more] applications that propose to provide broadband service to the same broadband serviceable locations [or project areas overlap one or more other applications or project areas, relative to one or more unserved or underserved areas, including census blocks, census tracts, shapefile areas, individual addresses, or portions thereof], the office shall, [inform the impacted applicants of the project area overlap] prior to publishing information regarding the applications as required by §16.36 of this subchapter, resolve the overlapping areas to ensure that the award of grant funds are not duplicated for a broadband serviceable location [and provide the impacted applicants with an opportunity to resolve the overlapping unserved or underserved area].

[(b)] Applicants working to resolve an instance of overlapping applications or project areas shall jointly notify the office of such efforts

not later than the 10th business day after the first day of the application protest period.]

~~(c)~~ Applicants who have provided notice under subsection (b) of this section may submit their proposed resolution to the office and may amend their application not later than the last day of the application protest period. The proposed resolution between impacted applicants may not result in the addition of partners to a previously submitted application or project area nor the expansion of an application's project area.]

~~(b)~~ [(d)] The office shall resolve overlapping applications [if the impacted applicants do not resolve the overlapping unserved census blocks, census tracts, shapefile areas, individual addresses, or portions thereof], by evaluating each impacted application [shall be evaluated] independently; and the office shall:

(1) score each impacted application and the application receiving the highest score shall proceed to grant funding consideration with its project area locations [boundary] intact; and[-]

(2) remove the overlapping project locations [area] from the lower scored applications and provide notice to the impacted applicants that the overlapping project locations [areas] have been removed from the application.

~~(c)~~ The office shall provide notice of a determination made by the office under subsection (b) to each affected applicant including notice of the right, if any, to submit an amended application under subsection (e) of this section.

~~(d)~~ [(e)] If removing overlapping project locations [areas] as provided under subsection (b) [(d)] of this section results in the application [remaining project area] retaining less than 50% of the broadband serviceable locations originally proposed for the [original] project area, the office may, at its sole direction, remove the application from grant funding consideration. [The office may use any reasonable method to calculate the remaining project area.]

~~(c)~~ [(f)] If the office removes an overlapping location [project area] from an application, an applicant may amend and resubmit an application without the overlapping location [area] if:

(1) The remaining project area is greater than 50% of the original project area; or

(2) The remaining number of locations in the application [project area] is less than 50% of the broadband serviceable locations originally proposed for the [original] project area and the [office does not remove the] application has not been removed from grant funding consideration under subsection (d) [(e)] of this section.

~~(f)~~ [(g)] If an amended application without the overlapping location [areas] is not received by the office by the 10th business day after an applicant receives [receiving] notice that it may amend its application under subsection (c) [(d)] (2) of this section, the office shall [may] remove the application from grant funding consideration.

*§16.38. Special Rule for Overlapping Project Areas in Noncommercial Applications.*

(a) If both a commercial and noncommercial broadband service provider submit an eligible application to provide broadband service access to the same broadband serviceable locations [project area, or a portion thereof], the office shall inform the noncommercial provider of the overlap and the noncommercial provider shall be required to submit an amended application eliminating the overlapping locations [areas of overlap] for which the commercial provider proposes to provide expanded broadband service access.

(b) If a noncommercial broadband service provider required to amend its application under subsection (a) of this section does not submit an amended application to the office by the 10th business [30th] day after receiving notice of the overlapping areas, the office may remove the application from grant funding consideration.

*§16.40. Evaluation Criteria.*

(a) The office shall establish the eligibility and award criteria applicable for each round of competitive grant funding by publishing the criteria in a notice of funds availability as provided by §16.31 of this subchapter. In establishing eligibility and award criteria, the office shall [prioritize applications that]:

(1) prioritize applications that expand access to and adoption of broadband service in designated areas [that are eligible for funding] in which the highest [lowest] percentage of [addresses have access to] broadband serviceable locations are unserved or underserved locations [servicee]; [and]

(2) prioritize applications that expand access to broadband service in public and private primary and secondary schools and institutions of higher education;[-]

(3) prioritize applications that connect end-user locations with end-to-end fiber optic facilities that meet speed, latency, reliability, consistency, scalability, and related criteria as the office shall determine;

(4) give preference to applicants that provide the information requested by the office under Government Code, §490I.0105 and §490I.01061; and

(5) take into consideration whether an applicant has forfeited federal funding for defaulting on a project to deploy qualifying broadband service.

(b) In addition to the evaluation criteria provided under subsection (a) of this section [making award decisions], the office may include and provide preferences for [shall consider and may give preference to applications based upon] the following evaluation criteria in the notice of funds availability:

(1) application participant(s) experience;

(2) technical specifications including broadband transmission speeds (Mbps upload and download) that will be deployed as a result of the project;

(3) estimated project completion date;

(4) the availability of matching funds including amount, percentage, and source of matching funds;

(5) cost effectiveness and overall impact as measured by the total project cost, the total number of prospective broadband service locations to be served by the project, the proportion of unserved and underserved locations to be served by the project compared to the number of serviceable locations with the designated area, the proportion of recipients to be served by the project compared to the population in the designated area, and the project cost per prospective broadband service recipient;

(6) geographic location including, but not limited to, designated areas located in rural areas where because of population density the cost of broadband expansion is characterized by disproportionately high capital and operational costs;

~~[(7) the number and percentage of unserved and underserved households and businesses in the project area;]~~

~~(7) [(8)] community, non-profit, or cooperative involvement or participation in the project;~~

(8) [(9)] affordability of broadband services in the designated areas in which the proposed project is located prior to the deployment of broadband services as a result of the project;

(9) [(40)] consumer price of broadband services that applicant proposes to deploy as a result of the project;

(10) [(44)] participation in federal programs that provide low-income consumers with subsidies for broadband services;

(11) [(42)] small business and historically underutilized business involvement or subcontracting participation; and

(12) [(43)] any additional factors [listed in a notice of funds availability published by] the office may determine are necessary to further the expansion and adoption of broadband service.

(c) Notwithstanding subsection (a)(3) of this section, the office may consider an application for a broadband infrastructure project that does not employ end-to-end fiber optic facilities if the use of an alternative technology is proposed for a high-cost area and may be deployed at a lower cost than deploying fiber optic technology.

*§16.41. Application Protest Process.*

(a) The office shall publish on the office's website criteria and requirements for submitting a challenge under this section. An application protest may only be made on the following basis: [The protesting party bears the burden to establish that an applicant or project is ineligible for an award or should not receive an award based on the criteria prescribed by the office].

(1) the applicant is ineligible to receive an award;

(2) the application contains broadband serviceable locations that are not eligible to receive funding because of an existing federal commitment to deploy qualifying broadband service to the location; or

(3) the project is ineligible to receive or should not receive an award based on the criteria prescribed by the office.

(b) A protest submitted under this section [Protests] shall be submitted electronically in the manner and on the forms prescribed by the office and shall be accompanied by all relevant supporting documentation. The protesting party bears the burden to establish that an applicant or project should not receive or is ineligible for an award based on the criteria prescribed by the office.

[(e) As set forth in greater detail in the application instructions prescribed by the office, each protest shall, at a minimum, include:]

[(1) a notarized statement verifying that the protest and submitted information are true and submitted in good faith;]

[(2) data from the broadband development map, if available, or if not available the current Federal Communications Commission (FCC) Form 477 or equivalent;]

[(3) a detailed map, using the project area map(s) submitted by the applicant, delineating the general challenged areas and indicating where the protested serviceable locations are within the proposed project area; and]

[(4) street level data for broadband serviceable locations within the challenged area including, but not limited to, the number of serviceable locations within the proposed project area and the minimum and maximum speeds those serviceable locations are able to receive].

(c) [(d)] The office shall review the protest and make a [written] determination as to whether the protest should be upheld. The office shall provide notice of its determination to each affected

applicant, including the right, if any, to submit an amended application under subsection (d) of this section.

(d) [(e)] If the office upholds a protest on the basis that one or more broadband serviceable locations are not eligible to receive funding under the criteria prescribed by the office, an applicant may amend and resubmit an application without the challenged locations and re-scope the application or project area if, after the protest is upheld: [-]

(1) the remaining number of broadband serviceable locations in the project area is greater than 50% of the original number of locations in the project area; or

(2) the remaining number of broadband serviceable locations in the project area is less than 50% of the original number of locations in the project area and the office permits, at its sole discretion, the applicant to amend the application.

(c) [(f)] If an amended application without the challenged locations [areas] is not received by the office by the 30th day after receiving notice of the determination under subsection (c) [(d)] of this section, the office may remove the application from grant funding consideration.

(f) [(g)] A determination made by the office under this section is not a contested case for purposes of Government Code, Chapter 2001.

*§16.42. Awards; Grant Agreement.*

(a) All award decisions shall be made at the sole discretion of the office and are not appealable or subject to protest.

(b) Grants for the deployment of broadband infrastructure awarded [Awards for grant funds awarded to applicants] under this subchapter may only be used for capital expenses, purchase or lease of property, and other expenses, including backhaul and transport, that will facilitate the provision or adoption of broadband service.

(c) A grant recipient shall have 30 days from the date of award to negotiate and sign the grant agreement. The comptroller may extend the deadline to fully execute the grant agreement upon a showing of good cause by the grant recipient(s). If the grant agreement is not signed by the grant recipient and received by the office by the later of the 30th day after the award of the grant agreement or the extended deadline date, the office may rescind the award.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER B. BROADBAND DEVELOPMENT PROGRAM

### 34 TAC §16.33, §16.34

The Comptroller of Public Accounts proposes the repeal of §16.33, concerning designated area eligibility, and §16.34, concerning designated area reclassification.

The comptroller will propose new §16.21, concerning the broadband development map, §16.22, concerning map challenges and criteria, §16.23, concerning the challenge process and deadlines, and §16.24, concerning map challenge determinations, in a separate rulemaking to replace §16.33 and §16.34. These new sections will implement changes to Government Code, §4901.0109, made by Senate Bill 1238, 88th Legislature, R.S., 2023, and will be located in Subchapter B, in new Division 1 (Broadband Development Map).

The comptroller also proposes to rename Subchapter B as Texas Broadband Development Office.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed rule repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed rule repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rule repeal would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public. The proposed rule repeal would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Greg Conte, Director, Broadband Development Office, at [broadband@cpa.texas.gov](mailto:broadband@cpa.texas.gov) or at P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under Government Code, §4901.0109, which permits the comptroller to adopt rules as necessary to implement Chapter 4901 regarding the Texas Broadband Development Office.

The repeals implement Government Code, Chapter 4901.

§16.33. *Designated Area Eligibility.*

§16.34. *Designated Area Reclassification.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER D. RURAL LAW ENFORCEMENT SALARY ASSISTANCE PROGRAM

34 TAC §§16.300 - 16.305

The Comptroller of Public Accounts proposes new §16.300, concerning definitions, §16.301, concerning applications, §16.302, concerning review by comptroller, §16.303, concerning awards; grant agreement, §16.304, concerning authorized uses of grant funds; limitations, §16.305, concerning reporting and compliance; §16.306, concerning provisions applicable to fiscal year 2024. These new sections will be located in 34 Texas Administrative Code Chapter 16, new Subchapter D (Rural Law Enforcement Salary Assistance Program). The new sections are required by Local Government Code, §§130.911, 130.912 and 130.913 which were enacted by Senate Bill 22, 88th Legislature, R.S., (2023). Senate Bill 22 establishes a new grant program to provide financial assistance to qualified sheriff's offices, constable's offices, and prosecutor's offices in rural counties.

Section 16.300 provides definitions.

Section 16.301 describes the application process.

Section 16.302 describes review by the comptroller.

Section 16.303 describes award decisions and the requirement for grant agreements.

Section 16.304 describes the authorized uses of grant funds and limitations on uses of grant funds.

Section 16.305 describes reporting requirements and available remedies for noncompliance.

Section 16.306 describes provisions applicable to Fiscal Year 2024.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by implementing the current statute. There would be no significant anticipated economic cost to the public. The proposed new rules would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Russell Gallahan, Manager, Local Government & Transparency at [Russell.Gallahan@cpa.texas.gov](mailto:Russell.Gallahan@cpa.texas.gov) or at P.O. Box 13528, Austin, Texas 78711-3528. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under Local Government Code, §§130.911, 130.912 and 130.913, which require the comptroller to adopt rules to implement a new grant program to provide financial assistance to qualified sheriff's offices, constable's offices, and prosecutor's offices in rural counties.

The new sections implement Local Government Code, §§130.911, 130.912 and 130.913.

### §16.300. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A qualified county or a qualified prosecutor's office that applies for a grant under this subchapter.

(2) County jailer--A person employed by the county sheriff as a licensed county jailer, under the provisions and requirements of Local Government Code, §85.005 and Occupations Code, §1701.301.

(3) County sheriff--A person elected or appointed as the county sheriff and who performs the duties of the office after complying with Local Government Code, §85.001.

(4) Deputy sheriff--A person appointed as deputy sheriff pursuant to Local Government Code, §85.003 who performs motor vehicle stops in the routine performance of their duties.

(5) Fiscal year--The twelve consecutive calendar months during which an applicant tracks its finances for budget and accounting purposes.

(6) Grant--A grant awarded under this subchapter that is a rural sheriff's office salary assistance grant under Local Government Code, §130.911, a rural constable's office salary assistance grant under Local Government Code, §130.912, or a rural prosecutor's office salary assistance grant under Local Government Code, §130.913.

(7) Grant agreement--An agreement between the comptroller and a grant recipient that governs the terms of a grant.

(8) Grant recipient--A qualified county or a qualified prosecutor's office that receives a grant under this subchapter.

(9) Population--The population shown by the most recent federal decennial census.

(10) Qualified constable--A constable who meets the following standards:

(A) is elected to, and currently holds, an office created on or before January 1, 2023;

(B) performs makes motor vehicle stops in the routine performance of their duties for the majority of their time on duty; and

(C) meets all eligibility requirements to serve under Local Government Code, §86.0021, and Code of Criminal Procedure, article 2.12(2).

(11) Qualified county--A county with a population of 300,000 or less.

(12) Qualified prosecutor's office--An office of a district attorney, criminal district attorney, or county attorney with criminal prosecution duties whose jurisdiction has a population of 300,000 or less.

(13) Safety equipment--Any tangible equipment used by a sheriff's office that is necessary to protect the health and physical safety of a county sheriff or deputy sheriff or county jailer while performing their duties, including ballistic helmets, ballistic plates, ballistic shields, entry tools, body armor, medical gear & masks, outer carriers, pepper spray, plate carriers, personal alarm, riot batons, riot helmets, riot shields, and miscellaneous safety gear which consists of door jams, disposable cuffs and knee pads.

(14) Vehicle--A law enforcement vehicle used by a sheriff's office for transportation while performing duties of the office such as patrols, responses to calls for service, and transport of persons in custody, and includes equipment affixed to the vehicle for law enforcement purposes.

#### §16.301. Applications.

(a) In order to receive payment under this subchapter, an applicant must submit a completed application.

(b) An application for funding under this subchapter shall be submitted electronically. The electronic form may require information the comptroller determines is necessary to make an award determination including a certification that the county has not and will not reduce the amount of funds provided to the sheriff's office, constable's office or prosecutor's office, as applicable, because of the award of grant funds under this subchapter. The electronic application process may require the applicant to sign the grant agreement contingent on approval of a grant award by the comptroller.

(c) An application under this subchapter must be submitted during the period that begins 60 days prior to the first day of the applicant's fiscal year and ends on the 30th day of the applicant's fiscal year.

(d) The application must be electronically signed by an official of the applicant that is authorized to bind the applicant. The authorized official must certify that all information in the application is true and correct.

#### §16.302. Review by Comptroller.

(a) Upon receipt of an application, the comptroller shall review the application to ensure that it is complete. If the application is incomplete, as determined by the comptroller, the comptroller may contact the applicant and request any required information. Any required information requested by the comptroller must be submitted by the applicant within 14 calendar days of the request.

(b) An application shall be rejected by the comptroller if the application is submitted:

(1) by an applicant that does not meet the definition of a qualified county or qualified prosecutor's office;

(2) before 60 days prior to the first day of the applicant's fiscal year for which the applicant is seeking a grant;

(3) after the 30th day of a fiscal year for which the applicant is seeking a grant; or

(4) on a form other than the electronic form prescribed by the comptroller.

(c) The comptroller may reject an application if the applicant or the application does not comply with this subchapter, or does not comply with Local Government Code, §§130.911, 130.912, or 130.913, as applicable.

(d) The comptroller shall make a determination of award not later than 90 days after the date the application is received.

#### §16.303. Awards; Grant Agreement.

(a) All funding is contingent upon the appropriation of funds by the Texas Legislature and upon approval of a grant application by the comptroller.

(b) If the comptroller makes an award, the comptroller shall notify the applicant of the award decision and shall provide a grant agreement to the applicant for signature if the grant agreement was not already submitted as part of the application.

(c) All award decisions shall be made at the sole discretion of the comptroller and are not appealable or subject to protest.

(d) A grant agreement shall require the comptroller to disburse funds as soon as practicable and shall require funds to be expended during the grant period. Funds for purchases are considered expended when the grant recipient is legally obligated to expend the funds.

(e) Grant award payments are subject to Government Code, §403.055 and §403.0551.

§16.304. Authorized uses of grant funds; Limitations.

(a) A rural sheriff's office salary assistance grant awarded under this subchapter and Local Government Code, §130.911, may only be used:

(1) to provide a minimum annual salary of at least:

(A) \$75,000 for the county sheriff;

(B) \$45,000 for each deputy sheriff who makes motor vehicle stops in the routine performance of their duties; and

(C) \$40,000 for each jailer whose duties include the safekeeping of prisoners and the security of a jail operated by the county; and

(2) provided that each county sheriff that meets the definition in §16.300(3) of this title, and each deputy sheriff that meets the definition in §16.300(4) of this title, and county jailer that meets the definition in §16.300(2) of this title that is employed by the county sheriff receives the minimum salary described by paragraph (1) of this section:

(A) to increase the salary of a person described by paragraph (1) of this section;

(B) to hire additional deputies or staff for the sheriff's office; or

(C) to purchase vehicles, firearms, and safety equipment for the sheriff's office.

(b) A rural constable's office salary assistance grant awarded under this subchapter and Local Government Code, §130.912:

(1) may only be used to provide a minimum annual salary of \$45,000 to a qualified constable; and

(2) for each qualified constable whose salary is funded in part by the grant awarded under this subchapter, the county must contribute at least 75% of the money required to meet the minimum annual salary requirement.

(c) A rural prosecutor's office salary assistance grant awarded under this subchapter and Local Government Code, §130.913, may only be used:

(1) to increase the salary of an assistant attorney, an investigator, or a victim assistance coordinator employed at the prosecutor's office; or

(2) to hire additional staff for the prosecutor's office.

(d) The cost of requiring a minimum annual salary as described in this section includes the increase of legally required nonmonetary benefits and taxes for that salary. A county may only use grant funds for the legally required nonmonetary benefits and taxes for a salary if the county provides the minimum annual salary required by this section. A county may not reduce a salary below the minimum salary required in this section in order to use grant funds for legally required nonmonetary benefits and taxes for that salary. For example, in Fiscal Year 2023, a county sheriff's minimum annual salary is \$50,000 and the county pays \$3825.00 for the employer's share of payroll taxes, pays \$2500 to Texas County and District Retirement System (TCDRS) for an employer's matching retirement contribution, and \$2500 for health insurance premiums. In Fiscal Year 2024, because of the grant, the annual salary is \$75,000, the employer's share of payroll taxes is \$5737.50, the employer's matching contribution to TCDRS is \$3750, and health insurance premiums are \$2500. The county may use grant funds to increase the sheriff's annual budget by \$25,000 + \$1912.50 + \$1250 = \$28,162.50.

(e) Subject to subsection (a)(2) of this section, if a grant recipient does not have sufficient grant funding to fund the minimum annual salaries required by this subsection, the grant recipient may use grant funds to increase the salaries of the persons described in this subsection on a pro-rata basis.

(f) If a person described by this section is a part-time or hourly employee, or holds a dual office or otherwise divides work hours between a position described in this section and another position, the minimum annual salary required by this section may be converted to a minimum hourly wage and will apply only to the hours of work performed for a position described in this section. The minimum hourly wage shall be the product of:

(1) the minimum annual salary described in this section; and

(2) a quotient:

(A) the numerator of which is equal to the number of hours the employee normally works performing duties for a position described in this section each week, not to exceed 40; and

(B) the denominator of which is equal to 40.

§16.305. Reporting and compliance.

(a) A grant recipient shall submit a compliance report detailing expenditures of grant funds using the comptroller's electronic form. The comptroller may request supporting documentation regarding expenditures and any other information required to substantiate that grant funds are being used for the intended purpose and that the grant recipient has complied with the terms, conditions, and requirements of the applicable statute, the grant agreement and this subchapter. Any information requested by the comptroller must be submitted by the grant recipient within 14 calendar days of the request.

(b) Grant recipients must comply with:

(1) the terms and conditions of the grant agreement;

(2) the requirements of Local Government Code, §§130.911, 130.912, or 130.913, as applicable;

(3) the relevant provisions of the Texas Grant Management Standards and the State of Texas Procurement and Contract Management Guide, or their successors, adopted in accordance with Texas law; and

(4) all applicable state or federal statutes, rules, regulations, or guidance applicable to the grant award, including this subchapter.

(c) If the comptroller finds that a grant recipient has failed to comply with any requirement described in subsection (b) of this section, the comptroller may:

(1) require the grant recipient to return the grant award or a portion of the grant award;

(2) withhold grant award amounts from the current grant or future grants to be received by a grant recipient pending correction of the deficiency;

(3) disallow all or part of the cost of the activity or action that is not in compliance;

(4) terminate the grant award in whole or in part;

(5) bar the grant recipient from future consideration for grant funds under this subchapter; or

(6) exercise any other legal remedies available at law.

§16.306. Provisions Applicable to Fiscal Year 2024.

(a) Notwithstanding anything to the contrary in §16.301(c) of this title, the first application period for all applicants in Fiscal Year 2024 will be from January 1, 2024 through January 31, 2024.

(b) For the purpose of §16.304(b)(2) of this title, for a grant recipient whose fiscal year begins on October 1, 2023, the county's contribution shall include county funds used to pay an annual minimum salary from October 1, 2023 through the end of the grant agreement awarded for Fiscal Year 2024.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

### SUBCHAPTER F. CONTRACT MANAGEMENT

#### DIVISION 2. REPORTS AND AUDITS

##### **34 TAC §20.509**

The Comptroller of Public Accounts proposes amendments to §20.509, concerning vendor performance reporting.

The amendments delete subsection (a), which contained a requirement that is adequately stated in subsection (b).

The amendment of former subsection (b), now subsection (a), removes language providing that a state agency shall submit a vendor performance report and grade within 30 days of completion or termination of a purchase order or contract. The subsection now states only that the submission is mandatory. The time for submitting a vendor performance report is addressed in relettered subsection (c).

The amendment also revises subsection (b)(1) through (b)(4). Amended paragraph (1) provides the requirement to report and grade a vendor's performance applies to a purchase exceeding \$25,000 from a contract administered by the comptroller and the Department of Information Resources, which refers to contracts entered into by the comptroller under Government Code, §2155.061, and by the Department of Information Resources under Government Code, §2157.068, respectively. Amendments to paragraph (2) state that the requirement applies to any agency contract, and to remove the reference to purchases made through an agency's delegated authority. This revised language is consistent with Government Code, §2155.089, which provides that the requirement applies to all contracts aside from those expressly exempted by Government Code, §2155.089(c). The amendments delete paragraphs (3) and (4) because all contracts subject to the requirement to report and grade a vendor's performance in Government Code, §2155.089, are covered by amended paragraphs (1) and (2).

The amendment of former subsection (c), now subsection (b), removes language providing that a state agency shall, for contracts in excess of \$5 million, submit a vendor performance report and grade within 30 days of completion of a key milestone identified in the contract and at least once each year during the term of the contract. The subsection now states only that the submission is mandatory. The time for submitting a vendor performance report is addressed in relettered subsection (c).

The amendment of former subsection (d), now subsection (c), adds language requiring submission of a vendor performance report and grade within 30 days of completion or termination of a purchase order or contract and, for a contract with a value that exceeds \$5 million, the completion of a key milestone identified in the contract. The 30-day requirement has been relocated to amended subsection (c) to clarify that a state agency's obligation to submit the vendor performance report and grade is separate from the requirement to submit within 30 days, and that a failure to submit within the 30-day period does not invalidate the report or grade. The amendment also corrects a grammatical error.

The amendment of former subsection (e), now subsection (d), corrects a grammatical error.

Subsection (f) is now subsection (e), and the text of this subsection is unchanged.

The amendment of former subsection (g), now subsection (f), excludes certain purchases from the requirement to report and grade a vendor's performance. Because paragraph (1) now states that the section does not apply to contracts described in Government Code, §2155.089(c), it no longer reproduces the operative language from the Government Code.

Subsection (f), formerly subsection (g), also excludes certain small purchases from the requirement to report and grade a vendor's performance. Paragraph (2) excludes spot purchases of \$10,000 or less, for which competitive bidding is not required under §20.82(b)(1) of this title. Paragraph (3) excludes purchase orders resulting from informal bids under §20.82(d)(1)(A), which applies to purchases of goods and services not exceeding \$25,000.

There is no requirement in statute to report vendor performance for spot purchases. Spot purchases are not "contracts" within the meaning of Government Code, Title 10, Subtitle D. Spot purchases are carved out by Government Code, §2155.132(e), which distinguishes a purchase "made under a written contract" from the broader category of purchases. Therefore, not every purchase is a "contract," and smaller purchases are not subject to all formal contracting requirements. Because Government Code, §2155.089 applies to contracts, spot purchases are outside its scope.

Likewise, there is no requirement in statute to report vendor performance for purchases resulting from informal bids. Purchases resulting from informal bids are not "contracts" within the meaning of Government Code, Title 10, Subtitle D. The informal bidding method of procurement is described in Government Code, Chapter 2156, Subchapter B. That method of procurement is expressly distinguished in Chapter 2156 from the "Contract Purchase Procedure" in Subchapter A and the formal bidding procedure in Subchapter C. While Subchapters A and C each reference the awarding of a "contract" (§2156.007 and §2156.125, respectively), Subchapter B does not mention that term. Because Government Code, §2155.089 applies to contracts, purchases resulting from informal bids are outside its scope.

Prudent procurement policy does not require vendor performance reporting for spot purchases and purchases resulting from informal bids. Government Code, §2155.002, instructs the comptroller to focus resources on purchases "that involve relatively large amounts of money." Reporting and grading performance on every small purchase would consume significant amounts of agency staff time. By allowing, rather than requiring, agencies to report vendor performance on small purchases, the rule will allow agencies to focus on the most remarkable vendor performance, good and bad. Thus, the most useful reports may still appear in the comptroller's vendor performance tracking system.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by updating the rule to reflect or clarify the current practice. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:00 a.m. on November 9, 2023. To access the online public meeting by web browser, please enter the following URL into your browser: <https://txcpa.webex.com/txcpa/j.php?MTID=mfae8f91b93c70a92028543c39a652d1d> To join the meeting by computer or cell phone using the Webex app, use the access code 2495 042 9928. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by November 8, 2023.

Comments on the proposal may be submitted to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13186, Austin, Texas 78701-3186 or to the email address: [Tosca.McCormick@cpa.texas.gov](mailto:Tosca.McCormick@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These amendments are proposed under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2155.

The amendments implement Government Code, §2155.089.

#### §20.509. Vendor Performance Reporting.

~~[(a) A purchasing state agency shall review a vendor's performance of a purchase order or contract as provided in this section.]~~

~~(a) [(b)] A [No later than 30 days after the completion or termination of a purchase order or contract, a] state agency shall submit a report and grade of [on] a vendor's performance to the vendor performance tracking system as stated in §20.115 of this title (relating to~~

Vendor Performance Tracking System) for [any purchase of goods or services]:

~~(1) each purchase exceeding[~~of~~] \$25,000 [or more] from contracts administered by the comptroller or the Department of Information Resources; and~~

~~(2) each agency contract, except as provided by subsection (f) of this section [made through an agency's delegated authority as described in §20.82 of this title (relating to Delegated Purchases);]~~

~~[(3) made pursuant to the authority in Government Code, Title 10, Subtitle D; or]~~

~~[(4) for which a state agency is required to use the best value standard].~~

~~(b) [(e)] In addition, if the value of a contract exceeds \$5 million, a state agency must submit a [performance] report and grade of [on] a vendor's performance to the vendor performance tracking system as stated in §20.115 of this title upon [within 30 days of] the completion of a key milestone identified in the contract and at least once each year during the term of the contract.~~

~~(c) [(d)] If a state agency does not submit a vendor performance report and grade within 30 days of the completion or termination of a purchase order or contract and, for a contract with a value that exceeds \$5 million, the completion of a key milestone identified in the contract [in accordance with subsection (b) or (e) of this section], it shall document the reason in its contract [procurement] file.~~

~~(d) [(e)] A state agency shall:~~

~~(1) evaluate the vendor's performance based on:~~

~~(A) information prepared by the state agency in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;~~

~~(B) compliance with the material terms of the contract;~~

~~(C) ability to correct instances of contractual non-compliance; and~~

~~(D) other relevant evaluation criteria presented in the online [~~on-line~~] vendor performance tracking system; and~~

~~(2) [for the purchase order or contract which is the basis for the report,] assign the vendor a letter grade.~~

~~(e) [(f)] State agencies shall independently evaluate the contract performance and use the following grading scale when assigning a letter grade to a vendor:~~

~~(1) A state agency shall assign an "A" when it determines that the vendor significantly exceeded the requirements of the purchase order or contract to the state's benefit, that any problems with the purchase order or contract were minor, and that corrective actions taken by the vendor to address such problems were highly effective. If the best value standard was used to award the purchase order or contract, an "A" means that the vendor satisfied that standard.~~

~~(2) A state agency shall assign a "B" when it determines that the vendor exceeded some requirements of the purchase order or contract to the state's benefit, that any problems with the purchase order or contract were minor, and that corrective actions taken by the vendor to address such problems were effective. If the best value standard was used to award the purchase order or contract, a "B" means that the vendor satisfied that standard.~~

~~(3) A state agency shall assign a "C" when it determines that the vendor met the requirements of the purchase order or contract~~



and that corrective actions taken by the vendor to address minor problems were satisfactory. If the best value standard was used to award the purchase order or contract, a "C" means that the vendor satisfied that standard but that the vendor's performance did not merit an "A" or "B."

(4) A state agency shall assign a "D" when it determines that the vendor did not meet some of the requirements of the purchase order or contract, that problems with the purchase order or contract were serious, and that corrective actions taken by the vendor to address such problems were only marginally effective or not fully implemented. If the best value standard was used to award the purchase order or contract, a "D" means that the vendor did not satisfy that standard.

(5) A state agency shall assign an "F" when it determines that the vendor did not meet the requirements of the purchase order or contract, that problems with the purchase order or contract were serious, and that corrective actions taken by the vendor to address such problems were ineffective. If the best value standard was used to award the purchase order or contract, an "F" means that the vendor did not satisfy that standard.

(f) [(g)] A state agency is not required to report or grade vendor performance for [This section does not apply to]:

(1) contracts exempt from vendor reporting under Government Code, §2155.089(c) or another statutory provision [an enrollment contract described by 1 TAC §391.205(b)(5)];

(2) purchases for which competitive bidding is not required under §20.82(b)(1) of this title [a contract of the Employees Retirement System of Texas except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Insurance Code, Title 8, Subtitle H]; or

(3) purchases procured through informal bids under §20.82(d)(1)(A) of this title [a contract entered into by:]

[(A) the comptroller under Government Code, §2155.061; or]

[(B) the Department of Information Resources under Government Code, §2157.068].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 28, 2023.

TRD-202303584

Victoria North

General Counsel, Fiscal and Agency Affairs Legal Services  
Comptroller of Public Accounts

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 475-2220



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 16. PLANNING AND DEVELOPMENT OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) proposes amendments to §16.105 and §16.154, related to the Unified Transportation Program (UTP).

#### EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

Amendments to §16.105, Unified Transportation Program (UTP), provide clarification and flexibility. Changes to subsection (e) and (f) provide clarification that major changes and changes to funding allocations in Category 12 Strategic Priority require adoption by the commission. The proposed changes also clarify that the redistribution of carryover does not constitute a major change.

Amendments to §16.154, Transportation Allocation Funding Formulas, provide for efficiencies in federal fund utilization and management of UTP allocations. Subsection (a)(2) is amended to provide clarity that the intent of the Commission is for Category 2 funding to be allocated to priority projects as determined by the MPO. This subsection (a)(2) is also amended to add "districts" to the Category 2 Metropolitan and Urban Corridor Projects formula allocation and specifies funding is specific to projects within the Metropolitan Planning Organizations' boundaries.

Amendments to §16.154(a)(4) clarify the department will determine the final distribution of the allocation of Category 5 Congestion Mitigation and Air Quality funds between the district and MPO to ensure the timely use of funds and requires the MPO to obtain the district's concurrence on the projects the MPO intends to use Category 5 funds.

Amendments to §16.154(i) refine the definition of carryover for UTP categories and adds references for the adjustments to carryover in Category 5 Congestion Mitigation and Air Quality and Category 2 Metropolitan and Urban Corridor Projects based on new subsections (j) and (k), respectively.

New §16.154(j) prescribes an annual review of carryover in Category 5 Congestion Mitigation and Air Quality. This review allows the department to better manage federal funds, mitigate the risks of a funding lapse or rescission, and addresses potential underutilization of Category 5 funding. Pending the review, if a district or MPO carries over more than 200 percent of its allocation in Category 5 Congestion Mitigation and Air Quality Improvement from the previous year, the department may reduce the district's carryover to 200 percent and assign the excess to projects in other eligible districts or MPOs as authorized by law.

New §16.154(k) prescribes an annual review of carryover in Category 7 Metropolitan Mobility and Rehabilitation. This review allows the department to better manage federal funds, mitigate the risks of a funding lapse or rescission, and addresses potential underutilization of Category 7 funding. Pending the review, if an MPO carries over more than 200 percent of its allocation in Category 7 Metropolitan Mobility and Rehabilitation (TMA) from the previous year, the department may reduce the district and MPO's Category 2 Metropolitan and Urban Corridor Projects carryover and transfer the excess to the district's Category 11 District Discretionary allocation for use on the district's safety program.

#### FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

## LOCAL EMPLOYMENT IMPACT STATEMENT

Humberto Gonzalez, P.E., M.B.A., Transportation Planning and Programming Division Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

## PUBLIC BENEFIT

Humberto Gonzalez, P.E., M.B.A., Transportation Planning and Programming Division Director, has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefits anticipated as a result of enforcing or administering the rules will include more efficient use of allocated funding in the UTP, and a more efficient use of federal funding.

## COSTS ON REGULATED PERSONS

Humberto Gonzalez, P.E., M.B.A., Transportation Planning and Programming Division Director, has determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

## ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

## GOVERNMENT GROWTH IMPACT STATEMENT

Humberto Gonzalez, P.E., M.B.A., Transportation Planning and Programming Division Director, has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rule will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

## TAKINGS IMPACT ASSESSMENT

Humberto Gonzalez, P.E., M.B.A., Transportation Planning and Programming Division Director, has determined that a written takings impact assessment is not required under Government Code, §2007.043.

## PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on November 3, 2023, in the Ric Williamson Hearing Room, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:00 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the General Counsel Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8630 at least five working days before the date of the hearing so that appropriate services can be provided.

## SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §16.105 and §16.154 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "UTP Formula Allocation Rule Changes." The deadline for receipt of comments is 5:00 p.m. on November 13, 2023. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

## SUBCHAPTER C. TRANSPORTATION PROGRAMS

### 43 TAC §16.105

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.991, which requires the commission to adopt rules related to the department's unified transportation program and §201.996, which requires the commission to adopt rules that specify the formulas for allocating funds to districts and metropolitan planning organizations.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §201.991 and §201.996.

§16.105. *Unified Transportation Program (UTP).*

(a) General. The department will develop a unified transportation program (UTP) that covers a period of ten years to guide the development and authorize construction and maintenance of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. In developing the UTP, the department will collaborate with local transportation entities and public transportation operators as defined by 23 C.F.R. Part 450.

(b) Requirements. The UTP will:

(1) be financially constrained for planning and development purposes based on the planning cash flow forecast prepared and published in accordance with §16.152(a) of this subchapter (relating to Cash Flow Forecasts);

(2) list estimated funding levels and the allocation of funds to each district, metropolitan planning organization (MPO), and other authorized entity for each year in accordance with Subchapter D of this chapter (relating to Transportation Funding);

(3) list all projects and programs that the department intends to develop, or on which the department intends to initiate construction or maintenance, during the UTP period, and the applicable funding category to which a project or program is assigned, after consideration of the:

(A) statewide long-range transportation plan (SLRTP);

(B) metropolitan transportation plans (MTP);

(C) transportation improvement programs (TIP);

(D) MPO annual reevaluations of project selection in MTPs and TIPs, if any, in accordance with subsection (c) of this section;

(E) statewide transportation improvement program (STIP);

(F) recommendations of rural planning organizations (RPO) as provided in this subchapter; and

(G) list of major transportation projects in accordance with §16.106 of this subchapter (relating to Major Transportation Projects); and

(4) designate the priority ranking within a program funding category of each listed project in accordance with subsection (d)(2) of this section.

(c) MPO annual reevaluation of project selection. An MPO may annually reevaluate the status of project priorities and selection in its approved metropolitan transportation plan (MTP) and transportation improvement program (TIP) and provide a report of any changes to the department at the times and in the manner and format established by the department. The reevaluation must be consistent with criteria applicable to development of the MTP and TIP in accordance with federal requirements.

(d) Project selection.

(1) The commission will consider the following criteria for project selection in the UTP as applicable to the program funding categories described in §16.153 of this chapter (relating to Funding Categories):

(A) the potential of the project to meet transportation goals for the state, including efforts to:

(i) maintain a safe transportation system for all transportation users;

(ii) optimize system performance by mitigating congestion, enhancing connectivity and mobility, improving the reliability of the system, facilitating the movement of freight and international trade, and fostering economic competitiveness through infrastructure investments;

(iii) maintain and preserve system infrastructure; and

(iv) accomplish any additional transportation goals for the state identified in the statewide long-range transportation plans as provided in §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP));

(B) the potential of the project to assist the department in attainment of transportation system strategies, the measurable targets for the transportation goals identified in subparagraph (A) of this paragraph, and other related performance measures; and

(C) adherence to all accepted department design standards as well as applicable state and federal law and regulations.

(2) The commission may also consider the potential for project delivery based on other factors such as funding availability and project readiness, after consideration of the criteria described in paragraph (1) of this subsection.

(3) With respect to Category 12 Strategic Priority, the commission may also consider if the district and MPO will commit funding from other categories to the project or as a condition for project selection, may require the district and MPO to commit funds from other categories to the project.

(4) The department will coordinate project selection criteria relating to the transportation goals identified in paragraph (1)(A) of this subsection with the MPOs for the purpose of achieving consistent, common goals, particularly with respect to mobility projects using a mix of several funding sources.

(5) The department will consider performance metrics and measures to evaluate and rank the priority of each project listed in the UTP based on the transportation needs for the state and the goals identified in paragraph (1)(A) of this subsection. A project will be ranked within its applicable program funding category, using a performance-based scoring system, and classified as tier one, tier two, or tier three for ranking purposes. The scoring system will be used for prioritizing projects for which financial assistance is sought from the commission and must account for the diverse needs of the state so as to fairly allocate funding to all regions of the state. Major transportation projects will have a tier one classification and be designated as the highest priority projects within an applicable funding category. A project that is designated for development or construction in accordance with the mandates of state or federal law or specific requirements contained in other chapters of this title may be prioritized in a funding category as a designated project in lieu of a tier one, tier two, or tier three ranking.

(6) The commission will determine and approve the final selection of projects and programs to be included in the UTP, except for the selection of federally funded projects by an MPO serving in an area designated as a transportation management area (TMA) as provided in §16.101(n) of this subchapter (relating to Transportation Improvement Program (TIP)). A federally funded project selected by an MPO designated as a TMA will be approved by the commission, subject to:

(A) satisfaction of the project selection criteria in paragraph (1) of this subsection;

(B) compliance with federal law; and

(C) the district's and MPO's allocation of funds for the applicable years.

(e) Approval of unified transportation program (UTP). Not later than August 31 of each year, the commission will adopt the unified transportation program for the next fiscal year. The commission may update the [The] UTP at any time. A change in the UTP to project funding allocations in Category 12 Strategic Priority as described in §16.153(a) of this subchapter (relating to Funding Categories) or [may be updated more frequently if necessary to authorize] a major change to one or more funding allocations or project listings in the most recent UTP must be adopted by the commission. For the purpose of updating the UTP, the term "major change" refers to the authorization of new projects or the revision of project funding allocations which exceed 10 percent of the project cost or \$500,000, whichever is greater, occurring in non-allocation program categories, excluding revisions to local funding contributions and projects designated under miscellaneous state and federal programs. The redistribution of a carryover under §16.154(i) of this subchapter (relating to Transportation Allocation Funding Formulas) does not constitute a major change, regardless of the amount of the redistribution. [The foregoing does not apply to project funding allocations in Category 12 Strategic Priority as described in §16.153(a) of this subchapter (relating to Funding Categories) and all revisions to projects funded in that category must be first included in an update to the UTP approved by the commission.]

(f) Administrative revisions. The UTP may be administratively revised at any time if the revision [and for any reason that] does not constitute a major change as described in subsection (e) of this section, does not change [with the exception of] project funding allocations in Category 12 Strategic Priority as described in subsection (e), or does not affect the total amount of funding allocated to a district for specific corridors in Category 4 Statewide Connectivity Corridor Projects as described in §16.153(a) of this subchapter (relating to Funding Categories).

(g) Public involvement for the unified transportation program.

(1) The department will seek to effectively engage the general public and stakeholders in development of the UTP and any updates to the program.

(2) The department will hold at least one statewide public meeting to present the draft UTP as early as the department determines is feasible to assure public input into the program prior to its final adoption. The department will also hold at least one statewide public meeting to present each proposed update to the program. The department will publish notice of each public meeting as appropriate and use communications strategies to maximize attendance at the meeting. The department may conduct a public meeting by video-teleconference or other electronic means that provide for direct communication among the participants.

(3) The department will report its progress on the program and provide an opportunity for a free exchange of ideas, views, and concerns relating to project selection, funding categories, level of funding in each category, the allocation of funds for each year of the program, and the relative importance of the various selection criteria.

(4) The department will hold at least one statewide hearing on its project selection process including the UTP's funding categories, the level of funding in each category, the allocation of funds for each year of the program, and the relative importance of the various selection criteria prior to:

(A) final adoption of the UTP and any updates; and

(B) approval of any adjustments to the program resulting from changes to the allocation of funds under §16.160 of this chapter (relating to Funding Allocation Adjustments).

(5) The department will publish a notice of the applicable hearing in the *Texas Register* a minimum of 15 days prior to its being held and will inform the public where to send any written comments. The department will accept written public comments for a period of at least 30 days after the date the notice appears in the *Texas Register*. The department may also accept public comments by other means, as specified in the notice. A copy of the proposed project selection process, the UTP, and any adjustments to the program, as applicable, will be available for review at the time the notice of hearing is published on the department website and, on request, will be available at district offices and at the department's Transportation Planning and Programming office in Austin.

(6) The department will present information regarding the development of the UTP and any updates to the commission not later than the month prior to final adoption of the UTP and any updates.

(h) Publication. The department will publish the entire approved unified transportation program, updates, adjustments, and administrative revisions together with any summary documents highlighting project benchmarks, priorities, and forecasts on the department's website. The documents will also be available for review, on request, at district offices and at the department's Transportation Planning and Programming Division office in Austin.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 12, 2023

For further information, please call: (512) 463-3164



## SUBCHAPTER D. TRANSPORTATION FUNDING

### 43 TAC §16.154

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.991, which requires the commission to adopt rules related to the department's unified transportation program and §201.996, which requires the commission to adopt rules that specify the formulas for allocating funds to districts and metropolitan planning organizations.

§16.154. *Transportation Allocation Funding Formulas.*

(a) Formula allocations. The commission will, subject to the mandates of state and federal law, allocate funds from program funding Categories 1, 2, 4, 5, 7, 9, and 11, as described in §16.153 of this subchapter (relating to Funding Categories), to the districts and metropolitan planning organizations (MPO) as follows:

(1) Category 1 Preventive Maintenance and Rehabilitation - will be allocated to all districts as an allocation program according to the following formulas:

(A) Preventive maintenance.

(i) Ninety-eight percent for roadway maintenance with 65 percent based on on-system lane miles, and 33 percent based on the pavement distress score Pace factor; and

(ii) Two percent for bridge maintenance based on square footage of on-system span bridge deck area;

(B) Rehabilitation. Thirty-two and one half percent based on three-year average lane miles of pavement distress scores less than 70, 20 percent based on on-system vehicle miles traveled per lane mile, 32.5 percent based on equivalent single axle load miles on-system, and 15 percent based on the pavement distress score Pace factor;

(2) Category 2 Metropolitan and Urban Corridor Projects - It is the commission's intent that Category 2 funds be used efficiently on priority projects as determined by the MPOs. Category 2 funds will be allocated to districts and MPOs for specific projects within the MPOs' boundaries in the following manner:

(A) 87 percent to MPOs operating in areas that are transportation management areas, according to the following formula: 30 percent based on total vehicle miles traveled on and off the state highway system, 17 percent based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census (census population), 10 percent based on lane miles on-system, 14 percent based on truck vehicle miles traveled on-system, 7 percent based on percentage of census population below the federal poverty level, 15 percent based on congestion, and 7 percent based on fatal and incapacitating vehicle crashes;

(B) 13 percent to MPOs operating in areas that are not transportation management areas, according to the following formula: 20 percent based on total vehicle miles traveled on and off the state highway system, 25 percent based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census (census population), 8 percent based on lane miles on-system, 15 percent based on truck vehicle miles traveled on-system, 4 percent based on percentage of census population below the federal poverty level, 8 percent based on centerline miles on-system, 10 percent based on congestion, and 10 percent based on fatal and incapacitating vehicle crashes;

(3) Category 4 Statewide Connectivity Corridor Projects - will be allocated to districts as an allocation program for specific corridors selected by the commission based on engineering analysis of three corridor types and, if applicable to the particular corridor type, considering the formula specified in subsection (a)(2) of this section:

(A) Mobility corridors - congestion considerations throughout the state;

(B) Connectivity corridors - two-lane roadways requiring upgrade to four-lane divided roadways to connect the urban areas of the state; and

(C) Strategic corridors - strategic corridors on the state highway network that provide statewide connectivity;

(4) Category 5 Congestion Mitigation and Air Quality Improvement - will be allocated to districts and MPOs as an allocation program for projects in a nonattainment area population weighted by ozone and carbon monoxide pollutant severity. The department will

determine the final distribution of the allocation between the district and MPO to ensure timely use of funds. Before the MPO's use of the Category 5 funds, the MPO must obtain the district's concurrence on the project for which the funds are to be used;

(5) Category 7 Metropolitan Mobility and Rehabilitation (TMA) - will be allocated to MPOs operating in areas that are transportation management areas as an allocation program based on the applicable federal formula;

(6) Category 9 Transportation Alternatives - a portion of the funds in this category will be allocated to MPOs serving urbanized areas with populations over 200,000 as an allocation program based on the areas' relative share of population, unless FHWA approves a joint request from the department and the relevant MPOs to use other factors in determining the allocation; and

(7) Category 11 District Discretionary - will be allocated to all districts as an allocation program based on state legislative mandates, but if there is no mandate or the amount of available funding in this category exceeds the minimum required by a mandate, the funding allocation for this category or the excess funding, as applicable, will be allocated according to the following formula: 70 percent based on annual on-system vehicle miles traveled, 20 percent based on annual on-system lane miles, and 10 percent based on annual on-system truck vehicle miles traveled. The commission may supplement the funds allocated to individual districts on a case-by-case basis to cover project cost overruns.

(b) Pace factor calculation. For purposes of subsection (a)(1) of this section, the Pace factor is a calculation used to adjust funding among districts according to increases or decreases in a district's need to improve its pavement distress scores. It will slow the rate of improvement for districts with the highest condition scores and accelerate the rate of improvement for districts with the lowest condition scores. The Pace factor is calculated by:

(1) determining the district with the highest distress score;

(2) determining the deviation of a district's distress score from the highest score;

(3) totaling the deviations for all districts as determined by paragraph (2) of this subsection.

(c) Non-formula allocations. The commission, subject to the mandates of state and federal law and specific requirements contained in other chapters of this title for programs and projects described in subsection (a) of this section, will determine the amount of funding to be allocated to a district, metropolitan planning organization, political subdivision, governmental agency, local governmental body, recipient of a governmental transportation grant, or other eligible entity from each of the following program funding categories described in §16.153 of this subchapter:

(1) Category 3 Non-Traditionally Funded Transportation Projects for specific projects;

(2) Category 6 Structures Replacement and Rehabilitation as an allocation program;

(3) Category 8 Safety Projects generally funded as an allocation program with some specific projects designated under the Safety Bond Program;

(4) Category 9 Transportation Alternatives - of the remaining funds in this category, a portion will be allocated to certain areas of the state, for specific projects, based on the areas' relative share of the population, and a portion may be allocated in any area of the state

for specific projects or transferred to other eligible federal programs, as authorized by law;

(5) Category 10 Supplemental Transportation Projects generally funded as an allocation program with some specific projects designated under miscellaneous federal programs;

(6) Category 12 Strategic Priority for specific projects;

(7) Aviation Capital Improvement Program;

(8) Public transportation;

(9) Rail; and

(10) State waterways and coastal waters.

(d) Allocation program. For the purposes of this chapter, the term "allocation program" refers to a type of program funding category identified in the unified transportation program for which the responsibility for selecting projects and managing the allocation of funds has been delegated to department districts, selected administrative offices of the department, and MPOs. Within the applicable program funding category, each district, selected administrative office, or MPO is allocated a funding amount and projects can be selected, developed, and, subject to the base cash flow forecast prepared and published in accordance with §16.152(b) of this subchapter (relating to Cash Flow Forecasts), let to contract with the cost of each project to be deducted from the allocated funds available for that category.

(e) Listing of projects. The department will list the projects being funded from funds allocated under subsections (a)(2) and (3) and (c)(6) of this section (categories 2, 4, and 12, respectively) that the department intends to develop and let during the ten-year unified transportation program (UTP) under §16.105 of this chapter (relating to Unified Transportation Program (UTP)), and reference for each listed project the program funding category to which it is assigned. If a program funding category is an allocation program, the listing is for informational purposes only and contains those projects reasonably expected at the time the UTP is adopted or updated to be selected for development or letting during the applicable period. For the purpose of listing projects in the UTP, "project" means a connectivity or new capacity roadway project. The term does not include a safety project, bridge project, federal discretionary project, maintenance project, preservation project, transportation alternatives project, or locally funded project.

(f) Limitation on distribution. In distributing funds to the districts, metropolitan planning organizations, and other entities described in subsections (a) and (c) of this section, the department may not exceed the planning cash flow forecast prepared and published in accordance with §16.152(a) of this subchapter (relating to Cash Flow Forecasts). In developing and distributing funds for purposes of letting, the department may not exceed the base cash flow forecast prepared and published in accordance with §16.152(b) of this subchapter.

(g) Formula revisions. The commission will review and, if determined appropriate, revise both the formulas and criteria for allocation of funds under subsections (a) - (c) of this section at least as frequently as every four years.

(h) Supplemental allocations. The commission may supplement the funds allocated to individual districts under subsections (a)(1) and (7) of this section in response to special initiatives, safety issues, or unforeseen environmental factors. Supplemental funding under this

subsection is not required to be allocated proportionately among the districts and is not required to be allocated according to the formulas specified in subsections (a)(1) and (7) of this section. In determining whether to allocate supplemental funds to a particular district, the commission may consider safety issues, traffic volumes, pavement widths, pavement conditions, oil and gas production, well completion, or any other relevant factors.

(i) Carryover. If at the beginning of a fiscal year an amount allocated in a category to an entity in the preceding fiscal year is not encumbered during the preceding fiscal year, that unencumbered amount plus any unencumbered amount carried over to the preceding fiscal year carries over in that category to that entity for use in the fiscal year. As used in this section, carryover refers to the amount carried over from one fiscal year to the next fiscal year and is not considered as an allocation for the fiscal year to which it is carried over. The department [executive director] may adjust the amount of the [funds allocated to a category with] carryover, subject to subsections (j) and (k) of this section [in that category from the previous year].

(j) Carryover in Category 5 Congestion Mitigation and Air Quality. To ensure that the state does not lose the ability to commit allocated funds and other federal funds, the department annually will review the use and programming of Category 5 funds. If at the beginning of a fiscal year a district and MPO has a carryover equal to more than 200 percent of the previous fiscal year's Category 5 allocation, the department may decrease the amount of the Category 5 carryover to an amount that is not less than 200 percent of the previous fiscal year's Category 5 allocation. The department may redistribute any amount of the reduction to another district and MPO but only for an eligible project in a non-attainment area, as authorized by law.

(k) Carryover in Category 2 Metropolitan and Urban Corridor Projects. To ensure that the state does not lose the ability to commit allocated funds and other federal funds, the department annually will review the use and programming of Category 7 funds. If at the beginning of a fiscal year an MPO has a carryover equal to more than 200 percent of the previous fiscal year's Category 7 allocation, the department may decrease the amount of the Category 2 carryover, if any, by an amount equal to the difference between the amount of the Category 7 carryover and 200 percent of the previous fiscal year's Category 7 allocation. The department may redistribute that amount from Category 2 to the corresponding district's Category 11 District Discretionary allocation for use on the district's safety program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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