

ATTACHMENT II  
Text of Proposed Amendment to 19 TAC

**Chapter 61. School Districts**

**Subchapter CC. Commissioner's Rules Concerning School Facilities**

**§61.1035. Assistance with Payment of Existing Debt.**

- (a) Eligibility. Certain restrictions apply to debt and to school districts eligible for the existing debt allotment (EDA).
- (1) Debt eligible for the EDA is an existing obligation of a school district made through the issuance of a bond for instructional or non-instructional purposes pursuant to Texas Education Code (TEC), Chapter 45, Subchapter A, or through the refunding of bonds as defined in TEC, §46.007. ~~[The district must have made a payment on the bonds on or before August 31, 2007.]~~ Lease-purchase agreements authorized by Local Government Code, §271.004, are not eligible. Payments demonstrating eligibility for the EDA must appear on the debt service schedule contained in the final official statement (FOS) or bond order. The debt service schedule contained in the FOS (or in the bond order, if the bonds are privately placed) and filed with the state information depository will be used to determine eligible bond payments. ~~[To the extent that neither the FOS nor the bond order is filed with the state information depository, such documents shall be filed with the Texas Education Agency (TEA).]~~ Bond issues and their related debt service payments that are not reported to the state information depository ~~[or the TEA, as applicable.]~~ are not eligible to receive EDA state assistance.
- ~~[(2) — Eligible debt does not include any portion of an existing obligation that has been approved for financial assistance with the Instructional Facilities Allotment (IFA) as defined in §61.1032 of this title (relating to Instructional Facilities Allotment), in accordance with TEC, Chapter 46.]~~
- (2) ~~[(3)]~~ Eligible bond payments include regularly scheduled principal and interest payments that are made between September 1 and August 31 each year.
- ~~[(4) — Certain other refinanced debt may be eligible for funding under this subsection.]~~
- (3) ~~[(A)]~~ A lease purchase refinanced with a general obligation bond shall be eligible for consideration for the EDA in future years ~~[based on the date of payment on the new bond and the limits on tax rates that apply] .~~
- ~~[(B) — Any portion of a bond issue that refinances a portion of an original lease purchase agreement that was eligible for IFA consideration but exceeded the IFA limit shall be eligible for consideration in future years pursuant to this subsection based on the date of first payment on the new bond and the limits on tax rates that apply.]~~
- ~~[(C) — If a lease purchase that is not funded in the IFA program is refinanced with a general obligation bonded debt, the bonded debt shall gain eligibility for the EDA by the terms of the EDA program. Any interest and sinking (I&S) fund tax effort associated with the bonded debt payments may be counted for purposes of computing the EDA. Qualification pursuant to this subsection shall be according to the terms of the program, including the date of first payment on the bond and the relevant tax rate limitation.]~~
- ~~[(D) — Debt that is refinanced in a manner that disqualifies it for eligibility for funding within the IFA program shall be treated as new bonded debt at the time of issuance for the purpose of funding consideration pursuant to the EDA.]~~
- (b) Qualifying debt service. The following provisions apply to the applicability of debt service payments for use in calculating EDA state aid.
- (1) Computation of qualifying debt service for fixed-rate bonds shall be based on debt service schedules obtained from the state information depository. Prepayment of a bond, either through an early call provision or some other mechanism, shall not increase the state's obligation or the

computed state aid pursuant to the EDA. To the extent that prepayments reduce future debt service requirements, the computation of state aid shall also be appropriately adjusted.

- (2) Computation of qualifying debt service for a variable rate bond shall be based on the minimum payment requirement necessary to meet the computed interest costs for the year.
- (3) If a district issues debt that requires the deposit of payments into a mandatory I&S fund or debt service reserve fund, the deposits will be considered qualifying debt payments for the purpose of the EDA if the district's bond covenant calls for the deposit of payments into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds or if the FOS stipulates the requirements of the I&S fund.

(c) ~~(4b)~~ Local share requirement. ~~[Qualifying debt service. Certain]~~ The following district revenues ~~[may]~~ qualify to meet the local share requirement of the EDA when computing state assistance amounts.

- (1) District revenues that qualify to meet a district's local share requirement for the EDA are specified in the TEC, §46.032(b) and (c). The commissioner of education will provide each district with information about which tax collections were not equalized by state assistance in the preceding school years and worksheets to enable districts to calculate tax collections that will not receive state assistance in a current school year. The commissioner will determine the amount of excess collections, if any, to be applied to the EDA local share requirement.
- (2) I&S fund taxes collected during a school year will be attributed first to satisfy the local share requirement of debts eligible for EDA state aid for that school year and then to satisfy the local share requirements of any Instructional Facilities Allotment (IFA) debts for that school year.
- ~~[(1) I&S fund taxes collected in the current school year may qualify toward meeting the local share requirement of the EDA. In addition, other district funds budgeted for the payment of bonds may qualify to meet the EDA local share requirements.]~~
  - ~~[(A) Funds budgeted by a district for payment of eligible bonds may include I&S fund taxes collected in the 1999-2000 school year or later school year in excess of the amount necessary to pay the district's local share of debt service on bonds in that year, provided that the taxes were not used to generate other state aid.]~~
  - ~~[(B) Funds budgeted by a district for payment of eligible bonds may include maintenance and operations (M&O) taxes collected in the current or previous school year that are in excess of amounts used to generate other state aid.]~~
  - ~~[(C) The commissioner of education will provide each district with information about what tax collections were not equalized by state assistance in the preceding school year and worksheets to enable districts to calculate tax collections that will not receive state assistance in a current school year.]~~
  - ~~[(D) The commissioner of education will determine the amount of excess collections, if any, to be applied to the EDA local share requirement.]~~
- ~~[(2) If a district issues debt that requires the deposit of payments into a mandatory I&S fund or debt service reserve fund, the deposits will be considered debt payments for the purpose of the EDA if the district's bond covenant calls for the deposit of payments into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds or if the FOS stipulates the requirements of the I&S fund and the bond covenant.]~~
- ~~[(3) An EDA correction form packet is required for any EDA-supported bonds that have undergone changes, including, but not limited to, refinancing, restatement, or any other transaction that materially affects the terms of the bonds, including transactions that materially affect the terms of the underlying bonds. An EDA correction form packet must be submitted to the TEA no later than 180 days following the date on which the transaction was approved by the attorney general, if the transaction required approval by the attorney general. If approval by the attorney general was not required, the EDA correction form packet is due within 180 days of the date that the school board approved the transaction.]~~

- ~~[(4) Failure to submit the EDA correction form packet to the TEA division responsible for state funding within the 180-day period defined in paragraph (3) of this subsection will result in the suspension of EDA state aid payments for the applicable EDA allotment award. This suspension has the following effects:]~~
- ~~[(A) Debt service payments associated with the applicable EDA allotment will be disqualified for EDA state aid upon expiration of the 180-day period defined in paragraph (3) of this subsection. Debt service payments made after the 180-day period expires will not earn EDA state aid.]~~
- ~~[(B) Eligibility for EDA state aid associated with the applicable allotment will resume on the date the EDA correction form packet, including any required supporting documentation, is received. The EDA state aid will be based on eligible debt service payments scheduled on or after the date the EDA correction form packet is received.]~~
- ~~[(C) Current and future EDA state aid payments may be adjusted to reflect the disqualified debt service payments. If no EDA state aid is due in a fiscal year that is affected by such an adjustment, a district will be notified about the disqualified amount and will be required to remit that amount to the TEA no later than 30 days after notification.]~~
- ~~[(D) Unless otherwise requested, payments of EDA state aid based on the updated eligible debt service reported in the completed EDA correction form packet shall be made with the payments due for the following fiscal year in accordance with TEC, §46.035.]~~
- ~~[(5) If a district enters into an interest rate management agreement related to debt that is supported by EDA funds, the district shall provide a schedule or schedules demonstrating the anticipated effect of the interest rate management agreement on the debt service for the related bonds. If a district enters into an interest rate management agreement, the amount of debt service eligible for EDA funding shall be determined as follows:]~~
- ~~[(A) If an interest rate management agreement is executed concurrently with a public offering or private placement of bonds related thereto, the debt service eligible for EDA funding will be equal to the amount of debt service reflected in the debt service schedule contained in the FOS, in the private placement memorandum, or (if no FOS or private placement memorandum is prepared) in supplemental schedule(s) filed with the TEA.]~~
- ~~[(B) If an interest rate management agreement is not executed concurrently with a public offering or private placement of bonds related thereto, the debt service eligible for EDA funding will be equal to the amount of debt service reflected in schedules to be provided by the district to the TEA as required by paragraph (3) of this subsection.]~~
- ~~[(C) Failure to identify the interest rate management agreement transaction to the commissioner within 180 days of its execution, by submitting an EDA correction form packet, may disqualify the debt service on the related bonds from the EDA state assistance as described in paragraph (4) of this subsection. Such debt service will remain ineligible unless the information described in this paragraph is provided to the TEA division responsible for state funding. The commissioner may require that EDA funding paid to a district for such ineligible debt service be refunded by the district.]~~
- ~~[(D) For purposes of this section, "interest rate management agreement" means an agreement that provides for an interest rate transaction, including a swap, basis, forward, option, cap, collar, floor, lock, debt derivative transaction, or hedge transaction; for a transaction similar to those types of transactions; or for a combination of any of those types of transactions, as described in the Texas Government Code, §1231.001.]~~
- ~~[(6) I&S fund taxes collected during a school year will be attributed first to satisfy the local share requirement of debts eligible for EDA state aid for that school year, second to satisfy the local share requirements of any IFA debts for that school year, and third to excess taxes that may raise the limit for the EDA program in a subsequent biennium if collected in the second year of a state fiscal biennium.]~~

- ~~[(7) — Computation of state aid in the EDA program for a variable rate bond shall be based on the minimum payment requirement. A district may receive such state aid for payment on a variable rate bond in excess of the minimum payment requirement as long as the additional amount meets certain conditions.]~~
- ~~[(A) — The payment is necessary to meet the computed interest costs for the year.]~~
- ~~[(B) — The amount shall not exceed the applicable limit for debt established pursuant to TEC, §46.034(b).]~~
- ~~[(C) — The district shall notify the commissioner of education of its intent prior to the adoption of the district's tax rate for debt service for the applicable year.]~~
- ~~[(8) — A district may exercise its ability to make payments in excess of the minimum payment required but the excess amount shall not be used in determining the limit on the existing debt tax rate (EDTR) or in the calculation of state assistance in that year.]~~
- ~~[(9) — Computation for fixed rate bonds shall be based on published debt service schedules as contained in the FOS or in schedules filed with the TEA for a private placement or other transaction in which no FOS is prepared. Prepayment of a bond, either through an early call provision or some other mechanism, shall not increase the state's obligation or the computed state aid pursuant to the EDA. To the extent that prepayments reduce future debt service requirements, the computation of state aid shall also be appropriately adjusted.]~~
- (d) Limits on assistance. The following exclusions apply to the amount of state assistance to which a district is entitled under the TEC, Chapter 46, Subchapter B.
- (1) For purposes of computing EDTR, as specified in the TEC, §46.034, and in accordance with the provisions of the TEC, §46.033, relating to eligible bonds for the EDA, tax collections or payment amounts associated with bonded debt in the IFA program shall be excluded from the calculation.
- (2) Excess funds budgeted in prior tax years that conform to the TEC, §46.032(c)(2) and (3), will not be applied for purposes of computing a district's tax rate for the payment of eligible bonds for the final year of the preceding state fiscal biennium as specified in the TEC, §46.034(b).
- ~~[(e) — Limits on assistance. The amount of state assistance is limited by the lesser of a calculated EDTR for eligible debt or an appropriated debt tax limit.]~~
- ~~[(1) — The calculated EDTR is a rate determined with the debt limit resulting from the lesser of calculations specified in subparagraphs (A) or (B) of this paragraph, except as specified in paragraph (2) of this subsection.]~~
- ~~[(A) — EDTR may be calculated as the I&S fund taxes collected for eligible bonds for the last fiscal year of the preceding state fiscal biennium divided by the property value used for state funding purposes in that year, then multiplied by 100.]~~
- ~~[(B) — EDTR may be calculated as the current year debt service payment on eligible bonds divided by the product of the current year average daily attendance (ADA) multiplied by \$35, and then divided by \$100.]~~
- ~~[(2) — If the district demonstrates, in a manner prescribed by the commissioner, that the district must construct, acquire, renovate, or improve one or more instructional facilities to serve the children of military personnel transferred to a military installation in or near the district under the Defense Base Closure and Realignment Act of 1990 (10 USC §2687), the EDTR may be calculated using the method specified in paragraph (1)(B) of this subsection.]~~
- ~~[(3) — The EDTR used in the funding formula cannot exceed the appropriated limit (\$.29).]~~
- ~~[(4) — For purposes of computing EDTR, tax collections or payment amounts associated with bonded debt in the IFA program shall be excluded from the calculation.]~~
- (e) ~~[(d)]~~ Data and payment cycles. The necessary data elements to calculate state assistance for existing debt and the associated payment cycle are determined by the commissioner ~~[of education]~~ .

- (1) An initial, preliminary payment of state assistance will be made as soon as practicable after September 1 of each year. This payment will be based on an estimate of ADA; the taxable value of property certified by the comptroller of public accounts for the preceding school year as determined in accordance with Government Code, Chapter 403, Subchapter M; and the amount of taxes budgeted to be collected for payment of eligible bonds from the prior year Texas Student Data System Public Education Information Management System (TSDS PEIMS) budget submission . ~~[Districts will supply information about budgeted taxes in July on a data collection survey.]~~
  - ~~[(2) Requests for payments and or adjustments submitted to the TEA after December 15 shall be processed with the payments due for the following fiscal year in accordance with TEC, §46.035.]~~
  - (2) ~~[(3)]~~ A near final determination of assistance for a school year will be made at the close of business for the current school year when final counts of ADA and tax collections ~~[collection amounts for eligible debt]~~ are available. If applicable, this [This] determination will also take into account [if applicable,] a reduced property value that reflects ~~[either]~~ a rapid decline pursuant to TEC, §42.2521 ~~[, or a grade level adjustment pursuant to TEC, §42.106]~~ .
    - (A) Any additional amounts owed will be paid as soon as practicable after the near final determination is made.
    - (B) Overallocations determined at near final will first be subtracted from the EDA or IFA entitlements in the subsequent school year. If an overallocation cannot be recovered by reducing the subsequent year's allocation, the district will be notified and the balance will be collected from the district in accordance with the TEC, §46.009(e).
  - (3) A final determination of assistance for a school year will be made after audited tax collections are submitted to the Texas Education Agency (TEA) in the annual financial and compliance report.
    - (A) Any additional amounts owed will be paid as soon as practicable after the final determination is made. Any additional overallocations calculated as a result of the final determination will be subtracted from entitlements in the subsequent school year.
    - ~~[(B) Any overpayment will be subtracted from the EDA in the subsequent year. If no such assistance is due in the subsequent school year, the Foundation School Fund will be reduced accordingly. If no payments are due from the Foundation School Fund, the district will be notified about the overpayment and must remit that amount to the TEA no later than 30 days after notification.]~~
    - (B) ~~[(C)]~~ Adjustments to state assistance based on changes in the final counts of ADA, [changes to a district's property value,] changes to IFA eligible debt, or any other reason must be requested no later than three years following the close of the school year for which the adjustment is sought.
- (f) ~~[(e)]~~ Deposit and uses of funds.
- (1) Funds received from the state for assistance with existing debt must be deposited in the district's I&S fund and must be taken into account before setting the I&S fund tax rate.
  - (2) State and local shares of the EDA must be used for the exclusive purpose of making principal and interest payments on eligible debt.
- (g) ~~[(f)]~~ Refinancing of eligible debt.
- (1) A district that refinances eligible debt in part or in full must submit the refinancing information to the state information depository, which will send the revised information to [inform] the TEA division responsible for state funding [in writing and must provide appropriate documentation related to the refinancing, including payment schedules for the refinanced debt that clearly identify the bonds being refinanced and the debt service attributable to the refinanced bonds, if available] . Refinancing of eligible debt includes:
    - (A) the refunding of eligible debt through the issuance of refunding bonds; and

- (B) the conversion of the period, mode, or index used to determine the interest rate for eligible debt in accordance with the order authorizing the issuance or delivery of such eligible debt.

~~[(2) — In order to retain eligibility for EDA funding, a district shall submit an EDA correction form packet in accordance with subsection (b)(3) of this section to the TEA division responsible for state funding no later than 180 days after the date the refunding bonds were approved for sale by the office of the attorney general (or, in the case of a conversion, such information shall be submitted within 180 days after the date of the conversion). Failure to submit the information required by this paragraph within 180 days after the date the refunding bonds were approved for sale by the attorney general (or, in the case of a conversion, within 180 days after the date of the conversion) will disqualify otherwise eligible bonds for EDA funding as described in subsection (b)(4) of this section. Such bonds will remain ineligible until such information is provided to the TEA division responsible for state funding. The commissioner may require that EDA funding paid to a district for such ineligible debt service be refunded by the district.]~~

(2) ~~[(3)]~~ The portion of the debt eligible for state assistance on refinanced bonds is subject to the same limits as eligible debt that has not been refinanced.

(3) ~~[(4)]~~ If a refinancing transaction decreases the current year bond payment requirement, the reduced payment amount shall be the basis of determining the limit on funding.

(4) ~~[(5)]~~ If a refinancing transaction increases the bond payment requirement, the amount of increase will only be used to determine state aid if the refinancing took place before the end of the previous state fiscal biennium ~~[shall not be used to determine state aid unless the pricing took place prior to January 1 of the last fiscal year of the preceding state fiscal biennium. The total debt service eligible for state assistance will be limited to the district's total debt service prior to January 1 of the last fiscal year of the preceding state fiscal biennium]~~ .

~~[(g) — Reports required. The commissioner shall require such information and reports as are necessary to assure compliance with applicable laws.]~~

~~[(1) — The commissioner shall require immediate notification by a district of relevant financing activities as described in subsections (b)(3) and (b)(5) of this section. Failure by a district to make such notification will result in the disqualification of debt service from EDA state aid as described in subsections (b)(4) and (b)(5)(C) of this section. A district is also required to report changes in use of bond proceeds, or other actions taken by the district that might affect state funding requirements by submitting a complete EDA correction form packet, or possibly face disqualification of debt service from EDA state aid, as described in subsections (b)(4) and (b)(5)(C) of this section.]~~

~~[(2) — A complete EDA correction form packet includes:]~~

~~[(A) — a completed EDA correction form;]~~

~~[(B) — the appropriate schedules needed to identify the original EDA allotment award or the most recently approved revised allotment award and changes to the title of the debt issuance, the authorization to issue the debt, and other relevant terms;]~~

~~[(C) — the appropriate schedules needed to describe changes in debt service schedules;]~~

~~[(D) — a copy of the FOS, or, if an FOS is not available, the final bond order or other official document describing the relevant financing activity, including a final debt service requirement schedule, the sources and uses schedule, and the schedule of refinanced bonds;]~~

~~[(E) — a copy of the letter from the attorney general approving the transaction, if the transaction required approval by the attorney general; and]~~

~~[(F) — copies of the payment vouchers for the payments made on the debt associated with the allotment, if requested by the TEA;]~~

~~[(3) — Receipt of the complete EDA correction form packet is required before debt service payments on the relevant debt issuances will be qualified for EDA state aid.]~~

~~[(4) — Upon evaluation of the complete EDA correction form packet, the TEA may request additional supporting documentation.]~~