

Texas Education Agency (TEA) proposes the repeal of §62.1071 and an amendment to §62.1072, concerning the equalized wealth level. The proposed repeal of 19 TAC §62.1071 would remove outdated provisions. The proposed amendment to 19 TAC §62.1072 would implement House Bill (HB) 3, 86th Texas Legislature, 2019, by adopting as part of the Texas Administrative Code (TAC) new manuals that describe the processes and procedures that TEA will use in the administration of the provisions of Texas Education Code (TEC), Chapter 49, and the fiscal, procedural, and administrative requirements that must be met by school districts subject to TEC, Chapter 49.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted the procedures contained in each yearly manual for districts subject to wealth equalization as part of the TAC since 2011. Manuals adopted for previous school years remain in effect with respect to those school years. Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

HB 3, 86th Texas Legislature, 2019, transferred, redesignated, and amended TEC, §41.006, as §49.006, authorizing the commissioner to adopt rules necessary for implementation of TEC, Chapter 49. Provisions from TEC, Chapter 41, Equalized Wealth Level, were transferred to TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

To align with changes made by HB 3, the title for 19 TAC Chapter 62 would change from "Commissioner's Rules Concerning the Equalized Wealth Level" to "Commissioner's Rules Concerning Options for Local Revenue Levels in Excess of Entitlement."

The proposed repeal of §62.1071, Manual for Districts Subject to Wealth Equalization, would remove outdated provisions from the 2016-2017 school year. The rule is obsolete.

The proposed amendment to §62.1072, Manual for Districts Subject to Wealth Equalization, 2017-2018 and 2018-2019 School Years, would adopt in rule the official TEA publications *Options and Procedures for Local Revenue in Excess of Entitlement 2019-2020 School Year* as Figure: 19 TAC §62.1072(a) and *Options and Procedures for Local Revenue in Excess of Entitlement 2020-2021 School Year* as Figure: 19 TAC §62.1072(b). Additionally, the section title would change from "Manual for Districts Subject to Wealth Equalization, 2017-2018 and 2018-2019 School Years" to "Options and Procedures for Local Revenue in Excess of Entitlement, 2019-2020 and 2020-2021 School Years."

Significant changes addressed in the new publications are as follows.

Chapter 41 Provisions

TEC, Chapter 41, was renumbered to TEC, Chapter 49, and amended by HB 3, 86th Texas Legislature, 2019.

Early Agreement Credit Provision

Districts purchasing attendance credits from the state in accordance with former TEC, Chapter 41, Subchapter D (Option 3), were able to obtain a discount in the form of an early agreement credit in accordance with former TEC, §41.098. The discount was limited to 4.0% of the computed cost of Option 3 before any discounts were applied or \$80 multiplied by the number of weighted average daily attendance (WADA) purchased, whichever was less. To qualify, the district subject to the provisions of TEC, Chapter 41, was to submit a signed Option 3 agreement to TEA with a postmark on or before September 1 of the applicable year. TEC, §41.098, was repealed by HB 3, and no equivalent provision was enacted in TEC, Chapter 49. Therefore, this provision will not continue.

Current Year Values

As established in TEC, §48.269, this determination is based on estimates of enrollment for school year 2019-2020 and estimated property values for tax year 2019. Because TEA does not yet have final state certified property values

for tax year 2019, it is using 2018 state certified property values increased by 5.76%, in accordance with the 2020-2021 General Appropriations Act, as a proxy for tax year 2019.

Netting Provision

TEC, §41.0041, which provided certain districts the option of authorizing the commissioner to withhold state aid in lieu of holding an election, has been repealed. However, provisions in TEC, §48.257(c), allow districts to offset the reduction of excess local revenue against TEC, Chapter 48, Subchapter F, funds. All districts will have the option to use state aid calculated under TEC, Chapter 48, Subchapter F, as an offset to their attendance credit for purposes of reducing their local revenue level. Districts using this option are required to submit the district intent/choice selection form and complete an Option 3 netting contract.

92-93 Hold Harmless Provision

The *Chapter 41 hold harmless provision* allowed a district to retain more wealth than it would otherwise keep at the equalized wealth level (EWL). A district was eligible for this provision if the revenue per WADA generated by applying a \$1.17 rate to the tax base at the EWL was less than what the district's revenue per WADA was in 1992-1993. This provision, which allowed a district to keep a higher tax base, referred to as the hold harmless tax base, so that its 1992-1993 revenue per WADA was maintained, was repealed by HB 3.

HB 3 created the Equalized Wealth Transition Grant, which will be phased out over the next five years. A school district is entitled to receive an annual allotment in an amount equal to the amount of additional revenue a school district received for the 2018-2019 school year under former TEC, §41.002. Beginning in school year 2020-2021, estimates of local property values for the current year will be collected from districts for use in determinations for districts with local revenue levels in excess of entitlement.

For purposes of calculating a district's allotment under the Equalized Wealth Transition Grant, the amount to which a district is entitled will be reduced by 20% for the 2020-2021 school year; 40% for the 2021-2022 school year; 60% for the 2022-2023 school year; and 80% for the 2023-2024 school year.

The proposed amendment would address new and revised provisions as applicable in the publication for each school year: Figure: 19 TAC §62.1072(a) for the 2019-2020 school year and Figure: 19 TAC §62.1072(b) for the 2020-2021 school year.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal beyond what is authorized by statute.

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 repeal an existing regulation to remove outdated provisions and expand an existing regulation to impose the requirements of recently enacted legislation.

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 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: Mr. Lopez 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 informing the public of the existence of annual publications relating to school district options for local revenue in excess of entitlement. 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. The proposed rule action would place the specific procedures contained in the *Options for Local Revenue in Excess of Entitlement* publications for the 2019-2020 and 2020-2021 school years in the TAC. TEA administers the wealth equalization provisions of the TEC, Chapter 49, according to the procedures specified in each yearly manual for districts subject to wealth equalization. Data reporting requirements are addressed primarily through the online FSP System.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The 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 April 24, 2020, and ends June 8, 2020. 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 April 24, 2020. 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/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §49.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §49.006.

<rule>

§62.1071. Manual for Districts Subject to Wealth Equalization.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §49.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §49.006.

<rule>

§62.1072. Options and Procedures for Local Revenue in Excess of Entitlement, 2019-2020 and 2020-2021
[Manual for Districts Subject to Wealth Equalization, 2017-2018 and 2018-2019] School Years.

- (a) For the 2019-2020 [~~2017-2018~~] school year, the processes and procedures that the Texas Education Agency (TEA) will use in the administration of the provisions of the Texas Education Code (TEC), Chapter 49, [~~Chapter 41,~~] and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 49, [~~Chapter 41,~~] must meet are described in the official TEA publication *Options and Procedures for Local Revenue in Excess of Entitlement 2019-2020 School Year* [~~Manual for Districts Subject to Wealth Equalization 2017-2018 School Year~~], provided in this subsection.

Figure: 19 TAC §62.1072(a) [~~Figure: 19 TAC §62.1072(a)~~]

- (b) For the 2020-2021 [~~2018-2019~~] school year, the processes and procedures that the TEA will use in the administration of the provisions of the TEC, Chapter 49, [~~Chapter 41,~~] and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 49, [~~Chapter 41,~~] must meet are described in the official TEA publication *Options and Procedures for Local Revenue in Excess of Entitlement 2020-2021 School Year* [~~Manual for Districts Subject to Wealth Equalization 2018-2019 School Year~~], provided in this subsection.

Figure: 19 TAC §62.1072(b) [~~Figure: 19 TAC §62.1072(b)~~]

- (c) The specific processes, procedures, and requirements used in the manuals for districts subject to wealth equalization are established biennially by the commissioner of education and communicated to all school districts.
- (d) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts subject to wealth equalization with respect to those years.