

The Texas Education Agency (TEA) proposes amendments to §61.1038 and §61.1039, concerning bond enhancement programs for school districts and open-enrollment charter schools. The proposed amendments would update cross references to state and federal statute and align language for open-enrollment charter schools to the rule on the Bond Guarantee Program for charter schools.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), Chapter 45, Subchapter I, establishes an intercept program to provide credit enhancement for school district bonds. Section 61.1038 sets out the statutory provisions for the intercept credit enhancement program; provides definitions; sets out the data sources used for prioritization of applications; explains application and approval requirements; provides a description of how applications would be processed; and sets out eligibility requirements, limitations on access to the credit enhancement, financial exigency provisions, and credit enhancement restrictions. The section also explains what effect defeasance would have on bonds approved for credit enhancement, the responsibilities of school districts that are unable to make payments on enhanced bonds, how payments would be made under the program, and how the Foundation School Program would be reimbursed for payments. In addition, the section describes penalties for repeated failure of a district to make payments on enhanced bonds.

TEC, Chapter 45, Subchapter J, establishes a charter school facilities credit enhancement program to help charter holders obtain financing to purchase, repair, or renovate real property for facilities. Section 61.1039 sets out the statutory provisions for the credit enhancement program, provides definitions, and explains the requirements of and policies related to the program's application and approval process. The section also provides limitations on access to the program and explains program payment conditions and restrictions.

House Bill 3, 86th Texas Legislature, 2019, recodified TEC, Chapter 41, to Chapter 49 and Chapter 42 to Chapter 48. The proposed amendments to §61.1038 and §61.1039 would update the statutory references to conform to the recodification.

In addition, the amendment to §61.1039 would eliminate references to a repealed federal statute regarding tax credit bonds and make the reference more encompassing of state or federal definitions of debt service. The amendment would also modify the statement regarding obligation of entities under control of the charter holder to conform to 19 TAC §33.67(e)(2)(A)(iii) relating to the Bond Guarantee Program for charter schools.

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, including school districts and open-enrollment charter schools, required to comply with the proposal beyond what the authorizing statute requires.

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: 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 the reflection of correct state and federal statutory references and clarification for open-enrollment charter schools on the implementation of the Bond Enhancement Program for charter schools. 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 August 7, 2020, and ends September 21, 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 August 7, 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/).

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §45.261(b), which gives the commissioner the authority to authorize reimbursement of the Foundation School Program in a manner other than that provided in TEC, §45.261; TEC, §45.263, which gives the commissioner authority to adopt rules necessary for the administration of the school district bond enhancement program; TEC, §45.302, which gives the commissioner authority to adopt a program for charter schools and establish a structure and procedures substantially similar to the program for school districts; TEC, §45.303, which gives the commissioner authority to limit participation to charter schools that meet standards established by the commissioner and to impose minimum debt service requirements; and TEC, §45.308, which states that if the commissioner establishes a program under TEC, Chapter 45, Subchapter J, the commissioner shall adopt rules to administer the program.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§45.261(b), 45.263, 45.302, 45.303, and 45.308.

<rule>

§61.1038. School District Bond Enhancement Program.

- (a) (No change.)
- (b) Definitions. The following definitions apply to the intercept credit enhancement program for school district bonds.
 - (1) (No change.)
 - (2) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §48.005 [~~§42.005~~].
 - (3)-(6) (No change.)
 - (7) Foundation School Program (FSP)--The program established under the TEC, Chapters ~~[41, 42, and]~~ 46, 48, and 49, or any successor program of state-appropriated funding for school districts in this state.
 - (8)-(13) (No change.)
- (c) Data sources.

- (1) The following data sources will be used for purposes of prioritization:
 - (A)-(C) (No change.)
 - (D) enrollment information reported to the Texas Student Data System Public Education Information Management System (TSDS PEIMS) for the five-year time period ending in the year before the application date.
- (2) (No change.)
- (d)-(f) (No change.)
- (g) Limitations on access to the credit enhancement.
 - (1) The commissioner will limit approval for the credit enhancement to a district with less than the amount of annual debt service per student in ADA or less than the amount of total debt service per student in ADA that is specified as the limitation in §33.65 of this title at the time of the application for a guarantee or a credit enhancement. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(5) of this section, of at least 25%, based on TSDS PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by §33.65(b)(1) of this title. The total debt service amount is the amount defined by subsection (b)(13) of this section.
 - (2) (No change.)
- (h)-(l) (No change.)
- (m) Payment from intercepted funds.
 - (1)-(3) (No change.)
 - (4) If, as a result of payments made under this subsection, there is insufficient money to fully fund the FSP, the commissioner will, to the extent necessary, reduce each school district's foundation school fund allocations, other than any portion appropriated from the ASF, in the same manner provided by the TEC, §48.266(f) [~~§42.253(h)~~], for a case in which school district entitlements exceed the amount appropriated. The following fiscal year, the commissioner will increase each school district's entitlement under the TEC, §48.266 [~~§42.253~~], by an amount equal to the reduction under this paragraph.
 - (5)-(6) (No change.)
- (n)-(p) (No change.)

§61.1039. Open-Enrollment Charter School Bond Enhancement Program.

- (a) (No change.)
- (b) Definitions. The following definitions apply to the open-enrollment charter school facilities credit enhancement program.
 - (1) (No change.)
 - (2) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during a fiscal year as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the open-enrollment charter holder is responsible for outstanding bonded indebtedness.
 - (A)-(B) (No change.)
 - (C) Annual debt service includes required payments into a sinking fund as authorized under the laws of Texas and the United States of America [~~26 United States Code (USC) §54A(d)(4)(C)~~], provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.

- (3) (No change.)
- (4) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §48.005 [~~§42.005~~].
- (5)-(9) (No change.)
- (10) Foundation School Program (FSP)--The program established under the TEC, Chapters ~~[41, 42, and]~~ 46, 48, and 49, or any successor program of state appropriated funding for school districts in the state of Texas.
- (11)-(12) (No change.)
- (13) Open-enrollment charter--This term has the meaning assigned in §100.1001 [~~§100.1011~~] of this title (relating to Definitions).
- (14) (No change.)
- (15) Open-enrollment charter school--This term has the meaning assigned to the term "charter school" in §100.1001 [~~§100.1011~~] of this title.
- (16) (No change.)
- (17) Open-enrollment charter school campus--This term has the meaning assigned to the term "charter school campus" in §100.1001 [~~§100.1011~~] of this title.
- (18) Proposed annual debt service--Payments of principal and interest on the outstanding bonded debt for which the enhancement is sought scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought and each fiscal year for which the credit enhancement is or would be in effect as described in the amortization schedule for the bonded debt for which the enhancement is sought. Proposed annual debt service includes required payments into a sinking fund as authorized under the laws of Texas and the United States of America [~~26 USC §54A(d)(4)(C)~~], provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.
- (19)-(20) (No change.)
- (c) Eligibility to apply for the credit enhancement.
 - (1) To have its application for the credit enhancement considered, an open-enrollment charter holder must:
 - (A)-(B) (No change.)
 - (C) in its application, agree that the bonded indebtedness for which the credit enhancement is sought will be undertaken as an obligation of all tax-exempt entities under common control of the open-enrollment charter holder and agree that all such entities will be liable for the obligation if the open-enrollment charter holder defaults on the bonded indebtedness, provided that an entity that does not operate a charter school in Texas is subject to this subparagraph only to the extent that it has received state funds from the open-enrollment charter holder ;
 - (D)-(E) (No change.)
 - (2) (No change.)
- (d)-(l) (No change.)