

The Texas Education Agency (TEA) proposes an amendment to §61.1019, concerning additional state aid for ad valorem tax credits under the Texas Economic Development Act. The proposed amendment would update cross references to statute and modify the method of filing requests for additional state aid for ad valorem tax credits.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1019 implements the provisions of Texas Education Code (TEC), §48.254. Specifically, the rule addresses the procedures for filing a request for aid and describes the forms to be used to make a request for aid. The proposed amendment to subsection (d)(1) would update the method of filing from mail to electronic format to streamline the application process.

House Bill 3, 86th Texas Legislature, 2019, recodified TEC, Chapters 41 and 42, to Chapters 48 and 49, respectively. The proposed amendment to §61.1019 would update the statutory references to conform to the recodification.

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.

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 continuing to provide an incentive to school districts to provide tax credits to businesses, thus encouraging capital investment, job creation, and an expansion of the state's ad valorem property tax base. In addition, the proposal would reflect correct statutory references and streamline the application process. 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 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 28, 2020, and ends October 12, 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 28, 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 amendment is proposed under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which authorizes the commissioner to adopt rules to implement and administer the provision of additional state aid under TEC, §48.254, including aid for school districts otherwise ineligible for state aid, in order to offset tax credits issued by school districts under the Texas Tax Code, Chapter 313; TEC, §48.254, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which entitles a school district, including a school district that is otherwise ineligible for state aid under TEC, Chapter 48, to state aid in an amount equal to the amount of all tax credits credited against ad valorem taxes of the district in that year under former Subchapter D, Chapter 313, Tax Code; and Texas Tax Code, Chapter 313 (the Texas Economic Development Act), which permits school districts to offer appraised value limitations on property and tax credits to certain capital-intensive industries that meet dollar and job creation requirements in order to encourage large-scale capital investments in Texas. School districts that have active agreements under the Texas Tax Code, Chapter 313, and that have companies subject to tax credits must net those credits against taxes paid.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.254, and Texas Tax Code, Chapter 313.

<rule>

§61.1019. Additional State Aid for Ad Valorem Tax Credits under the Texas Economic Development Act.

- (a) General provisions. This section implements the Texas Education Code (TEC), ~~§48.254~~ ~~§42.2515~~ (Additional State Aid for Ad Valorem Tax Credits Under Texas Economic Development Act). In accordance with the TEC, ~~§48.254~~ ~~§42.2515~~, a school district, including a school district that is otherwise ineligible for state aid under the TEC, Chapter ~~48~~ ~~42~~, is entitled to state aid in an amount equal to the amount of all tax credits applied against ad valorem taxes of the school district in each year that tax credits were applied pursuant to the Texas Tax Code, Chapter 313, also known as the Texas Economic Development Act. School districts eligible to receive additional state aid under the TEC, ~~§48.254~~ ~~§42.2515~~, must apply to the commissioner of education in order to receive additional state aid equal to the qualifying ad valorem tax credits issued under the Texas Tax Code, Chapter 313, Subchapter D, as that subchapter existed prior to repeal by House Bill (HB) 3390, 83rd Texas Legislature, Regular Session, 2013, subject to certain annual limitations.
- (b) (No change.)
- (c) Eligibility for additional state aid.
 - (1) A school district may be eligible for additional state aid under the TEC, ~~§48.254~~ ~~§42.2515~~, only pursuant to the provisions of the TEC, ~~§48.254~~ ~~§42.2515~~, and the Texas Tax Code, Chapter 313.
 - (2) (No change.)
 - (3) A school district must be in compliance with the reporting requirements set forth in 34 Texas Administrative Code Chapter 9, Subchapter F (relating to Limitation on Appraised Value on Certain Qualified Property), to be eligible for additional state aid under the TEC, ~~§48.254~~ ~~§42.2515~~.
- (d) Procedures for filing request for additional state aid for ad valorem tax credits.
 - (1) Method of filing. All requests for additional state aid under the TEC, ~~§48.254~~ ~~§42.2515~~, must be filed electronically ~~[by mail]~~ with the TEA ~~[, 1701 North Congress Avenue, Austin, Texas 78701,]~~ in accordance with instructions on the application.
 - (2) Information required for first year of tax credit. A school district's initial request for additional state aid under the TEC, ~~§48.254~~ ~~§42.2515~~, must include:

(A)-(E) (No change.)

- (3) Information required for subsequent years of tax credit. For each year subsequent to the year in which the initial request for the tax credit was approved, the request for additional state aid under the TEC, §48.254 [~~§42.2515~~], must include:

(A)-(C) (No change.)

(e)-(f) (No change.)

- (g) Determination of additional state aid. For any tax year for which additional state aid authorized by the TEC, §48.254 [~~§42.2515~~], is approved, additional state aid will be limited to the amount of the tax credit due to the taxpayer for a qualified property that is receiving a limitation on appraised value for that year as determined in the Texas Tax Code, §313.104, as that section existed prior to the repeal of the Texas Tax Code, Chapter 313, Subchapter D, by HB 3390, 83rd Texas Legislature, Regular Session, 2013.

- (h) Erroneous tax credits and recovery of state aid for erroneous tax credits. If the comptroller of public accounts or the governing body of the school district determines that an entity that received a tax credit was ineligible to have received it or received more credit than the entity should have received, the school district must provide a notification of the facts to the commissioner within 30 days of the official action. If the TEA determines that an entity that received a tax credit was ineligible to have received it or received more credit than the entity should have received, the commissioner will notify the school district within 30 days of the determination. Any overpayment of additional state aid provided to the school district based on issuance of an erroneous tax credit by the school district will be fully recovered by the TEA pursuant to the TEC, §48.272 [~~§42.258~~].

(i)-(j) (No change.)